

619
NO. 1861

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

J. W. ROBINSON, as Assignee of a Certain Judgment,
Entered in the Circuit Court of the United States
for the Western District of Washington, Northern
Division, in the Cause Entitled HANNAH
O'CALLAGHAN and EDWARD CORCORAN,
Complainants, vs. TERRENCE O'BRIEN, as
Administrator of the Estate of JOHN SULLIVAN,
Deceased, and MARIE CARRAU, Defendants,
Appellant,

vs.

W. F. HAYS and W. M. RUSSELL,
Appellees.

In the Matter of the Establishment of a Certain Lien
Claim of W. F. HAYS, etc.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the Western District of Washington,
Northern Division.

FILED

JUL 21 1910

Records of U.S. Circuit
Court of Appeals
619

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

J. W. ROBINSON, As Assignee of a Certain Judgment Entered in the Circuit Court of the United States for the Western District of Washington, Northern Division, in the Cause Entitled HANNAH O'CALLAGHAN and EDWARD CORCORAN, Complainants, vs. TERRENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, Deceased, and MARIE CARRAU, Defendants,

Appellant,

vs.

W. F. HAYS and W. M. RUSSELL,

Appellees.

In the Matter of the Establishment of a Certain Lien Claim of W. F. HAYS, etc.

TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court
for the Western District of Washington,
Northern Division.

	Index.	Page
Bill of Exceptions and Proceedings at Trial of Establishment of the Lien Claim of W. F. Hays Herein		44
Bill of Exceptions and Proceedings, Certificate to		118
Bond on Appeal		128
Bond on Appeal, Notice of Filing of Cost and Supersedeas		127
Bond on Appeal, Order or Decree Fixing Amount of, and Concerning Repayment of Moneys into Registry of Court		41
Certificate of Clerk U. S. Circuit Court to Original Exhibits		151
Certificate of Clerk U. S. Circuit Court to Supplemental Record		146
Certificate of Clerk U. S. Circuit Court to Transcript of Record		137
Certificate to Bill of Exceptions and Proceedings		118
Certificate of Expenses Paid from Registry Fund		144
Citation on Appeal (Copy)		133
Citation on Appeal (Original)		139
Decree Denying Petition to Intervene, Order or.		38
Decree Denying Request for Findings, Order or.		39
Decree Fixing Amount of Bond on Appeal and Concerning Repayment of Moneys into Registry of Court, Order or		41
Decree Granting Motion to Strike Petition of J. W. Robinson to Distribute Funds Pro Rata, Order or		43

Index.	Page
Exceptions, Bill of, and Proceedings at Trial of the Establishment of the Lien Claim of W. F. Hays Herein	44
Exceptions, Bill of, and Proceedings, Certificate to	118
Exhibit "A," Robinson's (Letter Dated Peoria, Ill., September 16, 1902, from W. F. Hays to Marie Carrau)	187
Exhibit "B," Robinson's (Letter Dated San Francisco, Cal., December 16, 1902, from F. D. Monckton, Clerk, to Marie Carrau)..	188
Exhibit "C," Robinson's (Letter Dated Olympia, Wash., April 13, 1908, from J. W. Robinson to Marie Carrau)	193
Exhibit "D," Robinson's (Letter Dated Washington, D. C., July 3, 1905, from Jas. H. McKenney to J. W. Robinson)	195
Exhibit No. 1, Hays' (Memorandum of Agreement, Dated Seattle, Wash., March 7, 1901, Signed by Marie Carrau and W. F. Hays) .	153
Exhibit No. 2, Hays' (Memorandum of Agreement, Dated Seattle, Wash., October 10, 1900, Signed by Marie Carrau and W. F. Hays)	156
Exhibit No. 3, Hays' (Memorandum of Agreement, Dated April 7, 1902, Signed by Marie Carrau, W. F. Hays, and W. M. Russell) . . .	158
Exhibit No. 5, Hays' (Bill for Printing Issued to W. F. Hays by the Mensing-Muchmore Company)	158

	Index.	Page
Exhibit No. 6, Hays' (Receipt for \$150, Issued to W. F. Hays, by the Washington National Bank).....		159
Exhibit No. 7, Hays' (Memorandum Checks Issued by the Washington National Bank of Seattle).....		160
Exhibit No. 8, Hays' (Bill for Printing Issued by McGill & Wallace to W. F. Hays).....		162
Exhibit No. 9, Hays' (Bill for Printing Issued by the Times Printing Company to W. F. Hays)....		163
Exhibit No. 10, Hays' (Receipt Dated Seattle, October 22, 1901, for \$25, Issued by A. Reeves Ayres to W. F. Hays).....		164
Exhibit No. 11, Hays' (Letter Dated Washington, D. C., May 18, 1904, from John H. Mitchell to W. F. Hays).....		165
Exhibit No. 12, Hays' (Receipt Dated Seattle, Wash., November 23, 1905, for \$46, Issued to W. F. Hays by the Scandinavian American Bank)....		166
Exhibit No. 13, Hays' (Telegram Dated Portland, Or., October 16, 1905, from John H. Mitchell to W. F. Hays)....		167
Exhibit No. 14, Hays' (Letter Dated Portland, Or., October 24, 1905, from John H. Mitchell to Charles H. Aldrich)		168
Exhibit No. 15, Hays' (Letter Dated Portland, Or., November 14, 1905, from John H. Mitchell to H. D. Mount)		169

Index.	Page
Exhibit No. 16, Hays' (Letter Dated Washington, D. C., April 30, 1904, from John H. Mitchell to W. F. Hays)	171
Exhibit No. 17, Hays' (Agreement Between W. F. Hays and John H. Mitchell)	172
Exhibit No. 18, Hays' (Agreement Dated Seattle, Wash., April 19, 1902, Signed by Marie Carrau)	182
Exhibit No. 19, Hays' (Statement of Account of Services of Master in Chancery and Stenographers, Dated Seattle, Wash., March 28, 1902)	183
Exhibit No. 20, Hays' (Proof of Service of Brief)	184
Exhibit No. 21, Hays' (Letter Dated Seattle, Wash., January 13, 1904, from W. F. Hays to Marie Carrau)	185
Exhibits, Original, Certificate of Clerk U. S. Circuit Court to	151
Exhibits, Original, Order Directing Transmission of, to Appellate Court	152
Findings of Fact, etc., Notice Concerning	25
Findings, Order or Decree Denying Request for.	39
Hays' Exhibit No. 1 (Memorandum of Agreement, Dated Seattle, Wash., March 7, 1901, Signed by Marie Carrau and W. F. Hays)	153
Hays' Exhibit No. 2 (Memorandum of Agreement, Dated Seattle, Wash., October 10, 1900, Signed by Marie Carrau and W. F. Hays)	156

	Index.	Page
Hays' Exhibit No. 3 (Memorandum of Agreement, Dated April 7, 1902, Signed by Marie Carrau, W. F. Hays and W. M. Russell) . . .		158
Hays' Exhibit No. 5 (Bill for Printing Issued to W. F. Hays by the Mensing-Muchmore Company)		158
Hays' Exhibit No. 6 (Receipt for \$150, Issued to W. F. Hays, by the Washington National Bank)		159
Hays' Exhibit No. 7 (Memorandum Checks, Issued by the Washington National Bank of Seattle)		160
Hays' Exhibit No. 8 (Bill for Printing Issued by McGill & Wallace to W. F. Hays)		162
Hays' Exhibit No. 9 (Bill for Printing Issued by the Times Printing Company to W. F. Hays)		163
Hays' Exhibit No. 10 (Receipt Dated Seattle, October 22, 1901, for \$25, Issued by A. Reeves Ayres to W. F. Hays)		164
Hays' Exhibit No. 11 (Letter Dated Washington, D. C., May 18, 1904, from John H. Mitchell to W. F. Hays)		165
Hays' Exhibit No. 12 (Receipt Dated Seattle, Wash., November 23, 1905, for \$46, Issued to W. F. Hays by the Scandinavian American Bank)		166
Hays' Exhibit No. 13 (Telegram Dated Portland, Or., October 16, 1905, from John H. Mitchell to W. F. Hays)		167

Index.	Page
Hays' Exhibit No. 14 (Letter Dated Portland, Or., November 24, 1905, from John H. Mitchell to Charles H. Aldrich)	168
Hays' Exhibit No. 15 (Letter Dated Portland, Or., November 14, 1905, from John H. Mitchell to H. D. Mount)	169
Hays' Exhibit No. 16 (Letter Dated Washington, D. C., April 30, 1904, from John H. Mitchell to W. F. Hays)	171
Hays' Exhibit No. 17 (Agreement Between W. F. Hays and John H. Mitchell)	172
Hays' Exhibit No. 18 (Agreement Dated Seattle, Wash., April 19, 1902, Signed by Marie Carrau)	182
Hays' Exhibit No. 19 (Statement of Account of Services of Master in Chancery and Stenographers, Dated Seattle, Wash., March 28, 1902)	183
Hays' Exhibit No. 20 (Proof of Service of Brief)	184
Hays' Exhibit No. 21 (Letter Dated Seattle, Wash., January 13, 1904, from W. F. Hays to Marie Carrau)	185
Judgment, Assignment of	4
Memorandum Decision on Question as to the Validity of Lien Claimed by W. F. Hays..	6
Motion for Show-cause Order, Affidavit of J. W. Robinson in Support of	19
Motion for Show-cause Order Against W. M. Russell and W. F. Hays	18

Index.	Page
Motion of J. W. Robinson for Reconsideration of Decision on Question of Validity of Lien Claim of W. F. Hays, and Notice Thereof..	14
Motion to Strike Petition of J. W. Robinson, and Notice Thereof	13
Motion to Strike Petition of J. W. Robinson to Distribute Funds Pro Rata, Order or Decree Granting	43
Names and Addresses of Counsel	1
Notice Concerning Findings of Fact, etc	25
Notice of Application for Order Denying Petition to Reconsider, etc	17
Notice of Filing of Cost and Supersedeas Bond on Appeal	127
Notice of Petition in Intervention	36
Notice of Presentation of Petition for Appeal, etc.	126
Objections to Granting of Petition for Appeal, etc.	130
Opinion on Question as to the Validity of Lien Claimed by W. F. Hays	6
Order Allowing Appeal, etc., Petition for, and..	121
Order Denying Petition to Reconsider and Directing Distribution of Moneys	16
Order Denying Petition to Reconsider, etc., Notice of Application for	17
Order Directing Transmission of Original Exhibits to Appellate Court	152
Order Extending Time to Docket Case on Appeal	132

Index.	Page
Order Permitting Appeal Expenses to be Charged Against Registry Fund	143
Order or Decree Denying Petition to Intervene .	38
Order or Decree Denying Request for Findings .	39
Order or Decree Fixing Amounts of Bond on Appeal and Concerning Repayment of Moneys into Registry of Court	41
Order or Decree Granting Motion to Strike Petition of J. W. Robinson to Distribute Funds Pro Rata	43
Petition for, and Order Allowing Appeal, etc.	121
Petition for Appeal, etc., Notice of Presentation of	126
Petition for Appeal, etc., Objections to Granting of	130
Petition for Appeal, etc., Proof of Service of . .	119
Petition in Intervention, Notice of	36
Petition of R. A. Ferguson et al. to Intervene, etc.	26
Petition of J. W. Robinson, Motion to Strike, and Notice Thereof	13
Petition of J. W. Robinson for Adjustment of the Matter of the Distribution of Fund, etc.	8
Petition of J. W. Robinson to Distribute Funds Pro Rata, Order or Decree Granting Motion to Strike	43
Petition to Intervene, Order or Decree Denying	38
Petition to Reconsider, Order Denying, and Directing Distribution of Moneys	16

Index.	Page
Petition to Reconsider, etc., Notice of Application for Order Denying	17
Praecipe for Supplemental Record	145
Praecipe for Transcript of Record	134
Proceedings at Trial of the Establishment of the Lien Claim of W. F. Hays Herein, Bill of Exceptions and	44
Proceedings, Certificate to Bill of Exceptions and	118
Proceedings Concerning Assignment of Judgment, Submission of Case, etc	116
Proceedings had October 30, 1908	45
Proof of Service of Petition for Appeal, etc.	119
Robinson's Exhibit "A" (Letter Dated Peoria, Ill., September 16, 1902, from W. F. Hays to Marie Carrau)	187
Robinson's Exhibit "B" (Letter Dated San Francisco, Cal., December 16, 1902, from F. D. Monckton, Clerk, to Marie Carrau)	188
Robinson's Exhibit "C" (Letter Dated Olympia, Wash., April 13, 1908, from J. W. Robinson to Marie Carrau)	193
Robinson's Exhibit "D" (Letter Dated Washington, D. C., July 3, 1905, from Jas. H. McKenney to J. W. Robinson)	195
Service of Petition for Appeal, etc., Proof of	119
Show-cause Order	23
Special Appearance of Attorneys for W. M. Russell	37
Supplemental Record, Praecipe for	145

Index. Page

Testimony:

Miss Marie Carrau	93
Miss Marie Carrau (cross-examination) . . .	110
Miss Marie Carrau (redirect examination) .	115
W. F. Hays	52
W. F. Hays (recalled)	56
W. F. Hays (cross-examination)	64
W. M. Russell	54

Transcript of Record, Certificate of Clerk U. S.

Circuit Court to	137
----------------------------	-----

Transcript of Record, Praeceptum for	134
--	-----

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 943.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Appellants,

vs.

HANNAH O'CALLAGHAN and EDWARD COR-
CORAN,

Appellees.

[Names and Addresses of] Counsel.

J. W. ROBINSON, Esquire, Lowman Building,
Seattle, Wash.

J. J. GODFREY, Esquire, Lowman Building,
Seattle, Wash.

J. J. McCAFFERTY, Lowman Building, Seattle,
Wash.

C. A. REYNOLDS, Esquire, Pioneer Building,
Seattle, Wash.

HARRY BALLINGER, Esquire, Pioneer Building,
Seattle, Wash.

C. T. HUTSON, Esquire, Pioneer Building, Seattle,
Wash.

W. F. HAYS, Esquire, American Bank Building,
Seattle, Wash.,

In Propria Persona.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion, at Seattle.*

No. 943.

HANNAH O'CALLAGHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, as Administrator of the
Estate of JOHN SULLIVAN, Deceased, and
MARIE CARRAU,

Defendants.

Judgment.

This cause having been regularly instituted in the above-entitled court, brought on for hearing and heard upon the pleadings and evidence, and a decree entered hereon on July 21, 1902, in favor of the complainants and against the respondents and Marie Carrau, one of the respondents, having appealed from said decree to the Circuit Court of Appeals for the Ninth Circuit, and said Circuit Court of Appeals having on September 12, 1903, rendered its decision herein, reversing the decree and judgment of the Circuit Court, and directing that the action be dismissed at complainants' costs and the complainants having appealed from the decision of the United States Circuit Court of Appeals for the Ninth Circuit, to the Supreme Court of the United States, and having also petitioned said Court for a writ of certiorari, and said appeal having been per-

fects and upon motion of Marie Carrau dismissed, for the reason that the decision of the Circuit Court of Appeals was final and the petition for a writ of certiorari having been granted and the record of appeal having been considered by the Supreme Court of the United States, as a return to the writ, and the Supreme Court of the United States having on May 29, 1905, rendered its decision by which the decision of the United States Circuit Court of Appeals was affirmed, with costs, and the mandate having been received from the Supreme Court of the United States, directing the dismissal of this action for want of jurisdiction, and comes J. W. Robinson, one of the solicitors for Marie Carrau, and asks for judgment, and notice having been heretofore given the said complainants of the application at this time to this Court for a judgment in accordance with said mandate, and the Court being advised,—

IT IS NOW ORDERED, ADJUDGED AND DECREED, that this action be and the same is hereby dismissed at complainants' costs; and it is further,

ORDERED AND ADJUDGED, that Marie Carrau do have and recover of and from C. H. Farrell, as the administrator of the estate of said Hannah O'Callaghan, deceased, and Edward Corcoran, and each of them, complainants herein, her costs and disbursements in this suit sustained, to be taxed by the clerk of this Court.

Done in open court, at Seattle, Washington, August 7, 1905.

C. H. HANFORD,
Judge.

Charles M. Farrell, as Admr., and Edward Corcoran, except to foregoing and said exception is allowed.

Aug. 7th, 1905.

Judge.

[Endorsed]: Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington. Aug. 7. 1905. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

[Assignment of Judgment.]

In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit.

IN EQUITY.

No. 943.

HANNAH O'CALLAGHAN (C. H. FARRELL, Substituted as One of the Complainants Therein, Administrator of the Estate of HANNAH O'CALLAGHAN, Deceased), and EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, Deceased, and MARIE CARRAU,

Defendants.

Know all Men by These Presents: That for a valuable consideration, the receipt of which is hereby acknowledged, Marie Carrau, one of the defend-

ants in the foregoing entitled action hereby assigns, transfers and sets over unto J. W. Robinson of Olympia, Washington, that certain judgment entered herein in her favor on August 7th, 1905, by the Judge of the above-entitled court against the said Edward Corcoran and the said C. H. Farrell, as administrator of the estate of Hannah O'Callaghan, deceased, for the sum of \$2619.90, subject to whatever payments may have been made thereon or thereunder by the United States Fidelity & Guaranty Company under its cost-bond filed in the above-entitled action, based upon which cost bond, suit was instituted in the Superior Court against said United States Fidelity & Guaranty Company, and judgment secured for the sum of \$400.00, with interests and costs of the Superior and Supreme Courts of the State of Washington, and I hereby authorize and empower the said Robinson, the assignee of the judgment aforesaid entered in the foregoing action, to take whatever action he may lawfully do under the law to collect said judgment, with interest, costs, etc.

IN WITNESS WHEREOF I have hereunto set my hand this March 16th, 1908, at Seattle, Washington.

MARIE CARRAU,
Judgment Creditor.

[Endorsed]: Assignment of Judgment. Filed in the U. S. Circuit Court, Western Dist. of Washington. Mar. 26, 1908. A. Reeves Ayres, Clerk. A. N. Moore, Dep.

*United States Circuit Court, Western District of
Washington, Northern Division.*

No. 943.

HANNAH O'CALLAGHAN et al.,
Complainants,

vs.

TERRENCE O'BRIEN et al.,
Defendants.

**Memorandum Decision on Question as to the Valid-
ity of Lien Claimed by W. F. Hays.**

Filed Jul. 6, 1909.

The question to be decided is whether Mr. Hayes, one of the attorneys for Marie Carrau, has a lien on a judgment in her favor for costs.

I find from the evidence that Hayes and Miss Carrau entered into a contract in writing whereby he was engaged as her attorney to conduct the litigation in her behalf, and that in the progress of the proceedings he disbursed several hundred dollars of his own money in payment of necessary expenses of the litigation, the exact amount of which cannot be ascertained from the evidence. After other attorneys had come into the case, with apparent acquiescence on the part of Hays, Miss Carrau attempted to dismiss him from the case without compensating him. This she could not do legally without an order of the Court for cause. There being need for additional funds, W. M. Russell made

a loan of \$425.00, repayment of which was guaranteed by Hayes. Russell also loaned other money which was used in payment of the expenses of the litigation amounting to the total sum of \$1500.00, including the loan of \$425.00 guaranteed by Hayes, for all of which Miss Carrau agreed that he should be reimbursed from any fruits of the litigation, and to secure repayment out of the money to be collected in satisfaction of the judgment for costs, Russell made an assignment of his claim to Hayes.

Miss Carrau assigned the judgment to J. W. Robinson, one of her attorneys, under an agreement, that he should use the money when collected in paying her debts incurred in the litigation, including the money due to Russell.

It is the opinion of the Court that the assignment to Robinson is not a bar to the assertion by Hayes of his right to a lien for services and the amount of money disbursed by him for the benefit of his client, but he is not entitled to absorb the entire fund to the exclusion of his associated and Russell.

To reach an equitable adjustment, the Court directs that Robinson shall have a right to control proceedings for collecting the judgment, as under the statute, if any execution is necessary, it must be issued in his name. The money when collected shall be applied to repayment of the amount actually loaned by Russell, with accrued interest as provided in the two written contracts signed by Marie Carrau, dated respectively April 7, 1902, and April 19, 1902, and the surplus, if any, to be divided equally between Hayes and Robinson.

There will be deducted from the share of Hayes the amount necessary to pay taxable costs in the irregular proceeding for which he is responsible.

C. H. HANFORD,
Judge.

[Endorsed]: Memorandum Decision of Question as to Validity of Lien Claimed by W. F. Hays. Filed U. S. Circuit Court, Western District of Washington. Jul. 6, 1909. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Petition of J. W. Robinson for Adjustment of the
Matter of the Distribution of Fund, etc.]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAGHAN et al.,
Complainants,

vs.

TERRENCE O'BRIEN et al.,
Respondents.

Comes now J. W. Robinson, the assignee of the judgment for costs herein, and based upon information and belief, and as well the verification of Marie Carrau, alleges the facts to be:

1st. That judgment was entered herein, as shown by the records, in favor of Marie Carrau for plus Two Thousand Six Hundred Dollars, as shown by the judgment herein for costs to which reference is

hereby made, and that prior to the entry of said judgment for costs the complainants had filed in this Court a bond for costs in the sum of Four Hundred Dollars, and which secured a portion of said judgment for costs, and which bond was sued upon in the State Court and judgment had, which was thereafter paid, as shown by the files and records in this cause, and which amount was credited on said judgment as having been received by Marie Carrau, and that the amount collected, less certain costs and expenses, was turned over and applied to the indebtedness of Marie Carrau to W. M. Russell for moneys advanced to carry on this litigation on the part of Marie Carrau, and that this is the same W. M. Russell who is mentioned in the memorandum decision on the question as to validity of lien claim by W. F. Hays rendered by this Honorable Court herein, to which reference is hereby made and the same made a part of this petition, and that in connection with the appeal from the United States Circuit Court of Appeals to the Supreme Court of the United States, J. W. Robinson, one of the solicitors for Marie Carrau, advanced the docket fee and costs necessary to protect respondents' rights on said appeal, and upon said appeal being determined by the Supreme Court of the United States, an attorneys' fee was allowed as part of the costs, which was received by W. F. Hays, who claimed the right to collect such solicitors' fees, but which it is here alleged he had no right or authority to collect.

2nd. That in order for Marie Carrau to carry on said litigation herein and on appeal to the Circuit Court of Appeals for the Ninth Circuit and in the

Supreme Court of the United States, it was necessary for her to secure certain moneys from her friends for that purpose, and that during this period under similar agreements to that mentioned in said memorandum decision by this Honorable Court between W. F. Hays and said Marie Carrau, the hereinafter named persons advanced the hereinafter specified amounts to the said Marie Carrau, which was expended by her in the various items of costs, etc., necessary in conducting said litigation and in defending her rights herein, and the persons hereinafter named furnished the amounts set opposite their names for that purpose, and there is no difference or distinction between the amounts hereinafter mentioned and the purpose for which the same was advanced to the said Marie Carrau than the funds mentioned with reference to which the said Hays claimed a lien against said judgment, to wit:

Edward Cheasty, for transcript, etc., on appeal, between August 1, 1902, and January 30, 1903.....	\$1,000.
August, 1902, J. A. Bailargeon, for same, etc.	500.00
December, 1902, Henry Varian, for same, etc.	500.00
January, 1903, Jack Barberis, expenses, etc.	600.00
January, 1903, R. J. Ferguson, expenses, etc.	500.00
August 1st, 1902, to August 1st, 1904, J. W. Robinson, expenses, etc.....	1,325.00
May, 1904, R. J. Ferguson, expenses, etc....	450.00
B. E. Prentice, expenses, etc.....	300.00

March, 1903, Ole Anderson, expenses, etc. . .	75.00
January, 1903, Miss Julia Ekson, expenses, etc.	350.00

All of which were from time to time advanced to the said Marie Carrau under agreements to be repaid out of the fruits of such litigation, if any there should be.

3rd. That after crediting said judgment with the amount of costs realized under said bond for security for costs and by reason of the memorandum decision herein mentioned, J. W. Robinson caused execution to issue herein against the property of O'Callaghan, et al., and that responsive thereto the complainants herein caused to be paid to the United States Marshal in full satisfaction of said execution, together with costs, the sum of Two Thousand Eight Hundred Ninety-one and 50/100 Dollars, (\$2,891.50), and your petitioner respectfully submits that as the assignee of said judgment and the stakeholder of said funds he desires that this Honorable Court shall adjust the matter of the distribution of this fund and to determine to whom and in what amount the same shall be distributed, and your petitioner also desires to call the Court's attention to the fact that a portion of this judgment is for witness fees, as shown by the cost bill herein, and that proper provision should be made for the payment of such witnesses the amounts therein allowed, and that the matter shall be equitably adjusted between all the parties who advanced these various sums, and that this Honorable Court enter an order directing your petitioner to distribute said moneys so acquired as may respond to equity and the rights of the various par-

ties hereto, and that there being insufficient money to reimburse the parties who have advanced these amounts, that an order be entered directing the same to be paid pro rata in accordance with the amounts advanced, and for any other relief to which your petitioner and assignee of said judgment may be entitled.

J. W. ROBINSON,

Petitioner and Assignee of said Judgment.

State of Washington,
County of King,—ss.

Marie Carrau, being sworn, says that she has heard read the foregoing petition of J. W. Robinson, assignee of said judgment and the petitioner herein, knows the contents thereof and believes the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 15th day of December, 1909.

JAMES J. McCafferty,

Notary Public in and for the State of Washington.
Residing at Seattle.

[Endorsed]: Petition. Filed U. S. Circuit Court, Western District of Washington. Dec. 17, 1909. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[**Motion to Strike Petition of J. W. Robinson and
Notice Thereof.**]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 943.

HANNAH O'CALLAGHAN and EDWARD COR-
CORAN,

Plaintiffs,

vs.

TERENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Defendants.

Comes now Wm. F. Hays, formerly attorney for the defendant, Marie Carrau, and moves this Honorable Court to strike the petition of J. W. Robinson, heretofore filed herein, in which said Robinson asks that an order be entered apportioning out among divers persons the proceeds of the judgment for costs in said action.

This motion to strike the aforesaid petition is made for the reason and upon the ground that this Honorable Court on the 6th day of July, 1909, duly entered its written order distinctly decreeing how said fund shall be distributed, and, therefore, the petition of the said Robinson is unauthorized in law.

WM. F. HAYS,

In Propria Persona.

To J. W. Robinson, Esq.

Take notice that the undersigned will on Monday, December 27, 1909, at 10:00 o'clock A. M., of said

day, on the coming in of Court, or as soon thereafter as counsel can be heard, call up the foregoing motion.

WM. F. HAYS.

Service of the within Motion this 22d day of December, 1909, is hereby admitted.

[Endorsed]: Motion to Strike Petition of J. W. Robinson. Filed U. S. Circuit Court, Western District of Washington. Dec. 23, 1909. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[**Motion of J. W. Robinson for Reconsideration of Decision on Question of Validity of Lien Claim of W. F. Hays, and Notice Thereof.**]

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

Comes now J. W. Robinson, the assignee of the judgment for costs herein, and as one of the solicitors for Marie Carrau herein and for and on behalf of the various parties named in the petition filed herein, December 16, 1909, and respectfully moves the Court for a reconsideration of the decision rendered herein by the Honorable C. H. Hanford, Judge, as shown by his Memorandum Decision on Question as to Validity of Lien Claim by W. F.

Hays, and in connection with said petition so as aforesaid filed herein and for the reasons contained in said petition, which is here referred to and made a part hereof, and because in the testimony taken before said Court it was shown that other persons, referring to the persons in said petition set forth, had advanced money to said Marie Carrau under similar conditions and for the same purpose and with a similar understanding and agreement as that referred to in the Memorandum Decision as to Russell and Hays, and for the reason that said fund is a trust fund which equitably belongs to the various parties who advanced the money necessary to carry on the litigation in behalf of Marie Carrau, and which resulted in the securing of said judgment for costs.

J. W. ROBINSON,

Assignee, Solicitor, etc.

To W. F. Hays and W. M. Russell:

You and each of you will hereby take notice that the foregoing motion will be called on for hearing before the Honorable C. H. Hanford, one of the Judges of said Court, at ten o'clock A. M., January 24, 1910, or as soon thereafter as the same can be heard, and that such motion will be presented in connection with a petition filed herein and the motion to strike such petition filed herein, and for hearing on said date.

J. W. ROBINSON,

Assignee, Solicitor, etc.

Service of the foregoing motion and notice admitted and receipt of copy thereof acknowledged this 21st day of January, 1910.

W. F. HAYS.

Service of the within Notice and Motion to reconsider by delivery of a copy to the undersigned is hereby acknowledged this 21st day of January, 1910.

R. H. LINDSAY,

Attorney for Wm. M. Russell.

[Endorsed]: Notice and Motion to Reconsider Memorandum Decision. Filed U. S. Circuit Court, Western District of Washington. Jan. 21, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Order Denying Petition to Reconsider and Directing Distribution of Moneys.]

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAGHAN, et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

ORDER DISTRIBUTING COSTS.

This cause coming on this 24th day of January, 1910, regularly for final hearing upon the petition of J. W. Robinson, on his own behalf and as attorney for the respondent, Marie Carrau, for a "reconsideration" of the decision made and filed herein on the 6th day of July, 1909, relating to the lien of W. F. Hays upon the judgment for costs; the petitioners, said Carrau and Robinson, having duly noted said

cause for hearing this day, and upon the notice and brief filed herein in support of said petition by the said Robinson on his own behalf and on the behalf of the said Marie Carrau, as her attorney, and the said Hays appearing in propria persona, and the Court having fully considered said petition and the brief of the said Robinson and being in all things fully advised,—

It is now ordered and adjudged that said petition to “reconsider” be, and the same is hereby denied, and the Clerk of this Court is hereby directed to distribute and pay over to the parties, or their attorney, the moneys derived under execution for costs herein now in the Registry of this Court, in accordance with the terms and provisions of the decision of this Court filed herein on the 6th day of July, 1909. Said clerk, however, to retain therefrom the sum total taxed as witness fees, said witness fees to be paid by said clerk only upon proper receipt therefor being filed with said clerk or entry upon the execution docket in said court.

C. H. HANFORD,
Judge.

**[Notice of Application for Order Denying Petition
to Reconsider, etc.]**

To Marie Carrau and to J. W. Robinson, her Attorney, and to the Petitioner, J. W. Robinson:

Take notice, that W. F. Hays, named and referred to in your petition heretofore filed herein on December 16, 1909, will apply to the above-entitled Court on his own behalf and as attorney for W. M. Russell, Assignee, at ten o'clock A. M., January 25, 1910.

or as soon thereafter as counsel can be heard, to have signed and entered the above and foregoing order.

January 24, 1910.

W. F. HAYS.

Service of the within Order this 24th day of January, 1910, is hereby admitted.

McCAFFERTY, ROBINSON & GODFREY.

[Endorsed]: Order Distributing Costs. Filed U. S. Circuit Court, Western District of Washington. Jan. 24, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

Motion [for Show-cause Order Against W. M. Russell and W. F. Hays].

Comes now J. W. Robinson, as assignee of the judgment herein, and solicitor for respondents and for the parties named in the petition with reference to a distribution of funds created by the collection of the judgment, and moves the Court for a show-cause order against W. M. Russell and W. F. Hays. to show cause before this Honorable Court on a date to be fixed, why they should not return and repay to

the clerk of this Court the moneys withdrawn herein from the registry of the Court, as shown by the files and records herein and the affidavit attached hereto.

J. W. ROBINSON,
Assignee and Solicitor for Parties Named.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

**Affidavit of J. W. Robinson [in Support of Motion
for Show-cause Order].**

United States of America,
State of Washington,
County of King,—ss.

J. W. Robinson, being duly sworn upon his oath, deposes and says, that judgment for costs was entered herein in favor of Marie Carrau, and thereafter duly assigned to this affiant in trust and for the benefit of the persons named in the petition filed herein on the 16th day of December, 1909, and affiant here refers to said petition and also to the lien claim filed herein by W. F. Hays, and to the Memorandum Decision on question as to validity of lien claimed by W. F. Hays, rendered herein by the Honorable C. H. Hanford, on July 6, 1909, and also to the order

distributing costs filed herein January 25, 1910, and to all the records and files herein since the filing and entry of said judgment for costs and all the files and records relating to said judgment, its assignment and the orders, petitions, motions with reference thereto, including the motion filed herein on January 22, 1910, for a reconsideration of the Memorandum Decision entered herein July 6, 1910, and makes the same and each thereof and the contents of each thereof a part of this affidavit.

That on January 24, 1910, the motion for a reconsideration of the former decision with reference to Hay's lien, the petition with reference to the other parties named in said petition, etc., came on for hearing before the Honorable C. H. Hanford, and the same was submitted upon oral argument, as affiant is informed and believes, and upon the typewritten suggestions of affiant representing himself and said parties; that the relation of affiant to said judgment and the funds arising from the collection of said judgment was that of a trustee or stakeholder; that the Memorandum Decision entered on July 6, 1909, was not followed by any judgment or order as required by the law and rules of Court, nor has there ever been any judgment entered herein with reference to said Hay's lien or his rights thereunder; that the said W. M. Russell was not a party to said proceedings in any other capacity or manner than those persons whose names are set forth in affiant's petition with reference thereto, hereinabove mentioned; that at the hearing on January 24, 1910, the Honorable Judge announced that the parties named in the petition were not before the Court and he declined

a reconsideration of the decision made and filed on July 6, 1909, and that W. F. Hays, on the afternoon of January 24, 1910, served notice upon the firm of McCafferty, Robinson & Godfrey, who were not the attorneys of record herein, that he would present to the Honorable Court an order, being the order distributing costs mentioned herein, on January 25, 1910, at 10:00 o'clock A. M., and that this affiant was absent from said city and returned thereto on the morning of January 26, 1910, and for the first time learned of said order, and that he immediately telephoned the clerk of said Circuit Court and learned from him that Russell and Hays had immediately upon the Judge's signing said order and on the same day withdrawn the following sums from the registry of said court, being a part of the judgment collected upon execution by affiant as aforesaid, and the following sums were paid to the said W. M. Russell and the said W. F. Hays, respectively, from the proceeds in the registry of the Court as aforesaid, to wit:

To W. M. Russell, Seventeen Hundred Ninety Dollars (\$1,790.00).

To W. F. Hays, Four Hundred Ninety-six and 33/100 Dollars (\$496.33).

And affiant here refers to the records and files in corroboration of this statement and said withdrawal of said funds.

That affiant is informed and believes, and so states the facts to be, that said W. F. Hays is insolvent, and that unless said sum be returned into the registry of this Court that the parties hereto will have no redress against him in the event that the orders of this Honorable Court are reversed upon appeal;

that so far as affiant is informed and believes the said Russell is entirely solvent and responsible, but affiant submits that this fund should be kept in the registry of the Court to await the judgment and orders of the Appellate Court; that affiant, in justice to the parties for whom he holds this money as trustee and stakeholder, and upon request, feels it his duty to have the decisions of this Honorable Court with reference to said alleged lien of the said Hays and the orders made with reference to said fund reviewed by the higher court, and therefore desires to perfect the record for that purpose, and will proceed as rapidly as the rules of Court permit to perfect the appeal and have the supersedeas bond fixed and all rights with reference thereto so far as Russell, Hays, et al., are concerned protected.

That if affiant permits this fund to remain out of the registry of the court, withdrawn as it has been, without any effort to cause the same to be refunded and repaid into the registry of the court, it may be claimed upon appeal that so far as these sums are concerned and these parties are concerned there has been an end of this proceeding.

That from the time of said hearing with reference to the matters hereinabove referred to and the entry of the order on January 25, 1910, this affiant had no notice and no opportunity or time to give notice of appeal or to prepare the papers to perfect an appeal from the ruling of said Honorable Court, to have the same reviewed, and that under the rules and decisions of the Court this affiant had a reasonable time in which to perfect the record herein and pre-

vent said funds from being distributed or to pass beyond the jurisdiction and control of the Court in order that the fruits of said intended appeal might be available to him as trustee, as aforesaid, and that unless this fund is required to be repaid into the registry of the court, a review of the orders and decisions of this Honorable Court in the event of reversal or modification will be fruitless.

That affiant has prepared and filed an application herein for this Honorable Court to fix the amount of the supersedeas bond herein on review.

J. W. ROBINSON.

Subscribed and sworn to before me this 27th day of January, 1910.

JAMES J. McCAFFERTY,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Motion and Affidavit for Order to Show Cause. Filed U. S. Circuit Court, Western District of Washington, Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 943.

HANNAH O'CALLAHAN et al.,
Complainants,
vs.
TERRENCE O'BRIEN et al.,
Respondent.

Show-cause Order.

Now, on this January 28, 1910, upon reading and filing the motion and affidavit of J. W. Robinson herein for a show-cause order against W. M. Russell and W. F. Hays requiring them to show cause why the funds withdrawn from the registry of the court by them on January 25, 1910, should not be returned to the registry of the court, there to remain during the pendency of an appeal from the decisions of the court in that particular, and the court being advised;

It is now ordered that W. M. Russell and W. F. Hays each repay into the registry of this court the sum, for Russell, of \$1,790.00, and the sum for Hays, of \$496.33, or show cause before this court on February 28, 1910, at the Federal Court Room at 10:00 o'clock A. M., why they should not be required to do so and why said fund should not remain in the registry of the court during the pendency of a proceeding to review said decisions with reference to the distribution of said fund, and this show-cause order shall be served immediately upon the said Hays and upon the said W. M. Russell by leaving with each of them personally a true copy thereof.

Dated at Seattle, Washington, January 28, 1910.

C. H. HANFORD,
Judge.

[Endorsed]: Show-cause Order. Filed U. S. Circuit Court, Western District of Washington. Jan. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 943.

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

Notice [Concerning Findings of Fact, etc.].

To W. F. Hays and to J. B. Reavis, Solicitor for
Hays and to W. M. Russell:

Your attention is hereby called to the fact that the Honorable C. H. Hanford filed in the above-entitled cause his Memorandum Decision on the question as to validity of the lien claimed by W. F. Hays, on July 6, 1909, and that no findings of fact, conclusions of law or decree or judgment have ever been entered herein with reference thereto, and you are hereby notified to present such findings of fact, conclusions of law, etc., as may respond to the Memorandum Decision and the testimony submitted herein, and to make effective said Memorandum Decision in accordance with the rules of this court, on February 28, 1910, at the hour of 10:00 o'clock A. M. of said day, or in the event that you fail so to do the Honorable Judge of said court will be requested to

direct you so to do or permit the solicitors in opposition to said lien claim to do so.

Dated at Seattle, February 23, 1910.

JAMES J. GODFREY,
J. W. ROBINSON,

Solicitors for J. W. Robinson, Assignee of the Judgment for Costs Herein, et al., Respondents.

Service of the foregoing demand and notice admitted February 23, 1910, at Seattle, Washington.

W. F. HAYS.

ROBERT H. LINDSAY.

[Endorsed]: Notice and Demand. Filed U. S. Circuit Court, Western District of Washington. Feb. 24, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN and EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

Petition [of R. A. Ferguson et al. to Intervene, etc.].
To the Honorable Judges of said Court:

Come now R. J. Ferguson, Henry Varian, Jack Barberis, B. E. Prentice, Edward Cheasty, J. A.

Baillargeon, J. W. Robinson, Ole Anderson and Julia Ekson, and respectfully represent to this Honorable Court the following facts, based upon which they ask to be allowed to intervene in this proceeding with reference to the distribution of the funds collected herein upon the judgment for costs entered herein, and allege as follows:

1. That the complainants herein entered the above-entitled suit in the above-entitled court, which was a suit in equity, and that the respondents appeared therein, and Marie Carrau, through her attorneys, made defense to said cause of action and that she appealed from the decision of said Circuit Court to the United States Circuit Court of Appeals for the Ninth Circuit, and that thereafter a writ of certiorari was granted by the Supreme Court of the United States and upon said writ and upon an appeal being taken by the complainants herein from the decision of the Circuit Court of Appeals to the Supreme Court of the United States the judgment of the United States Circuit Court of Appeals was affirmed, which directed that the action in the Circuit Court be dismissed for want of jurisdiction, and based upon the writ of mandate issued by the Supreme Court of the United States judgment was entered herein dismissing said action, and for costs, in favor of Marie Carrau, on August —, 1904, for Twenty-six Hundred Nineteen and 90/100 Dollars (\$2,619.90); that at the time of the institution of said suit in equity in said Circuit Court the attorneys for Marie Carrau sought and secured a bond for costs on behalf of the complainants for the sum of Four

Hundred Dollars (\$400.00), which together with the interest thereon was thereafter recovered by the said Marie Carrau from said bond company, and Four Hundred Ninety-five and 82/100 Dollars (\$495.82) credited on said judgment for costs above named; that after deducting certain sums for costs and attorneys' fees in the suit to collect from said bond company the balance was turned over to the said Marie Carrau, and as your petitioners are advised and here so state the facts to be, said Marie Carrau turned over to W. M. Russell, hereinafter mentioned, the sum of Three Hundred Dollars (\$300.00) on account for moneys which the said Russell had advanced to the said Marie Carrau for the purpose of carrying on the litigation in the above-entitled cause of action on behalf of the said Marie Carrau in making her defense thereto and in perfecting the appeals herein mentioned, and your intervenors hereby refer to all the records and files herein and by such reference make the same a part of this petition for intervention to the same extent as if the same were fully set forth herein, to wit, the pleadings, order for bond, writ of mandate from the Supreme Court of the United States, judgment, cost bill, etc.

2. That thereafter W. F. Hays, claiming to have been an attorney or solicitor for Marie Carrau in the above-entitled cause, filed a notice of lien claim herein for Ten Hundred Twenty-one Dollars (\$1,021.00), but your petitioners allege the facts to be that they had no knowledge or notice of such lien or any claim of that character, except the said J. W. Robinson, until on or about January first, 1910, and they allege

the facts to be upon information and belief, that in October, 1908, the Honorable Judge of this Court issued herein a show-cause order on the said Hays requiring him to establish his alleged lien against said judgment, which came on for hearing in a summary way before the Honorable C. H. Hanford, Judge of said Court, and the said Court made and entered hereon on July 6, 1908, a Memorandum Decision on the question as to the validity of the lien claim by W. F. Hays, but that no findings or decree have ever been entered therein with reference to said matter further than said Memorandum Decision, and that your petitioners had no knowledge thereof, with the exception of J. W. Robinson, until some time on or about January first, 1910; that in some way W. M. Russell was permitted to appear in said proceedings to establish the Hays lien claim, and that in said Memorandum Decision the Court found that the said Russell had advanced for the benefit of Miss Carrau the sum of Fifteen Hundred Dollars (\$1,500.00), and directed that in order to reach an equitable adjustment as to the distribution of said funds that the money when collected should be paid to the said Russell in an amount equal to the amount actually loaned by Russell, with accrued interest, in accordance with two written contracts made by Marie Carrau, dated April 7, 1902, and April 19, 1902, and also directed that the surplus, if any, be divided equally between Hays and Robinson, and directed that by reason of the fact that the said Marie Carrau had assigned in writing said judgment for costs to the said J. W. Robinson, and that such assignment had been placed

of record in this cause that the writ of execution for the collection of said judgment, if necessary, should be issued in the name of said Robinson and said money collected and paid into the registry of the court, and thereafter the said Robinson caused execution to issue and the United States Marshal caused a levy to be made upon a portion of the Sullivan Block on First Avenue in Seattle, Washington, and that thereafter and before any sale of said property took place, the owners of the Sullivan Block paid to the Marshal and the Marshal paid into the registry of the court in this cause the full sum claimed under said judgment for costs, as shown by said execution, which aggregated the sum of Twenty-seven Hundred Ninety-six and $58/100$ Dollars (\$2,796.58), after deducting the Four Hundred Ninety-five and $89/100$ Dollars (\$495.89) credited on said judgment from said bond company, and that said funds so received were paid into the registry of the court, and that thereafter J. W. Robinson, acting for himself and as stakeholder of said fund so in the registry of the court, filed herein, as your petitioners are informed and believe, a certain petition setting forth the facts with reference to the various amounts alleged to have been advanced to the said Marie Carrau for the purpose of assisting her in making her defense and in maintaining said litigation in the courts aforesaid, and which petition, as your intervenors are informed and believe, is still pending undetermined before said Court; that for the purpose of assisting the said Marie Carrau in defending her alleged rights in and to the property involved in this suit and be-

longing to the estate of John Sullivan, deceased, the hereinabove named persons at her special instance and request, along with the said W. M. Russell, advanced to her the following sums set opposite the names of the parties hereinabove and hereinafter named, to wit:

R. J. Ferguson.....	\$ 950.00
Henry Varian	500.00
Jack Barberis	600.00
B. E. Prentice	300.00
Edward Cheasty	1,000.00
J. A. Baillargeon	500.00
J. W. Robinson	1,325.00
Ole Anderson	75.00
Julia Ekson	350.00

And that each of said amounts were contributed and advanced to the said Marie Carrau for the purposes hereinafter mentioned in the same manner as the said Russell and the said Hays advanced the funds provided for and mentioned in the Memorandum Decision as hereinabove stated, and that said fund became and was a trust fund in the hands of J. W. Robinson, as assignee of said Marie Carrau of said judgment, to the full amount thereof less whatever was necessary to meet the expenses of the Court and the witness fees as shown in the cost bill, etc., and that each of your petitioners is entitled to his or her share pro rata of the whole of said judgment, less said costs, and that they, each and all, have the same rights in and to said fund as the said Russell and the said Hays.

3. That the said Robinson in presenting said petition to the Court, as your petitioners are informed and believe and so state the facts to be, did so believing that as stakeholder it was sufficient to bring to the attention of the Court these facts and the names of the persons with the amounts contributed, in order to have said fund distributed in accordance with justice and equity. That under the orders of the Court heretofore entered herein, without notice to these petitioners the whole of said fund is to be distributed to the said Russell and the said Hays in opposition and without consideration as to the rights of your petitioners, when as a matter of fact, and, as they are informed, as a matter of law, they contributed these sums just as Russell and Hays did and are entitled to share in the distribution of said fund; that if the orders of the Court heretofore entered are to be made effective and be carried out, all of which was done without notice to your petitioners, except as herein stated, the said Russell will receive practically all the money that he advanced to the said Carrau to carry on said litigation, and your petitioners will receive nothing.

That your petitioners' attention has been called to these facts and conditions and they now present to the Court the foregoing facts and ask to be allowed to intervene herein with reference to said trust fund and to be heard with reference to the allegations set forth in this petition of intervention, and that upon the hearing thereof, with all the parties interested in this fund before the Court, judgment be given in accordance with equity, and that said trust fund be

distributed among the various parties who contributed the funds necessary to carry on said litigation, and by reason of which said judgment for costs was secured in favor of the said Carrau; that it is shown upon the records of the Court and upon the admissions made in court and not disputed at the hearing of the right of lien of the said Hays that the said Carrau assigned said judgment to the said Robinson for the purpose of putting it in shape that it might be distributed equitably to all those who had contributed and advanced money to the said Carrau for the purposes hereinabove indicated.

4. That W. M. Russell has in no way intervened in this action and is not a party thereto, but that the orders heretofore issued herein with reference to the claim of said Russell were based upon no appearance by way of intervention or otherwise, and that the Honorable Judge of this court was erroneously of the impression, as these petitioners are informed and believe, that the said Russell was in some way a party to this suit before the Court, and reference is hereby made to the lien claims of Hays and to the Memorandum Decision thereon and to the petition for an equitable distribution of this fund filed herein December 16, 1909, and the motion of the said Hays to strike and the order of the Court therein amending the former Memorandum Decision as to costs, etc., and all these matters are hereby referred to and made a part of this petition; that Marie Carrau is wholly unable to repay any portion of the funds so advanced to her to assist in her defense in this cause, and that it was not only agreed that the fruits of this

litigation should refund these moneys to the various parties herein named, but it is here alleged that unless they receive their pro rata share of the funds collected upon the judgment herein for costs upon execution and paid into the registry of the court, they will be wholly unable to secure any portion of the funds so advanced; that said Marie Carrau is wholly without funds, and that your petitioners must depend upon this fund in order to be reimbursed to any extent whatever; that the said Russell and the said Hays each at all times mentioned in these records knew of the funds having been advanced by the various parties to this petition and the amounts advanced by them, and each knew the agreement and understanding with the said Carrau as to the fruits of this litigation, and at the time that said Russell asked for and received the funds which the records show he withdrew herein he knew that these petitioners were claiming a portion of that fund and all the circumstances surrounding the loan of the money to Carrau to assist in her defense.

Wherefore, your petitioners pray that they be permitted to intervene herein with reference to said fund and be permitted to show the amount of money they advanced, and that all persons who so contributed under an agreement, as your petitioners did, that the moneys should be refunded to them out of any fruits of the litigation, shall be treated alike and the fund distributed pro rata and in accordance with equity, and that notice be issued in the usual manner to the said Russell and the said Hays, and that a

hearing be had and the whole matter adjusted and said fund distributed.

JAMES J. GODFREY,
J. W. ROBINSON,
Solicitors for Petitioners.

United States of America,
State of Washington,
County of King,—ss.

R. J. Ferguson, being sworn, says, he is one of the petitioners herein; that he has read the foregoing petition, knows the contents thereof and believes the same to be true; that he verifies this petition in intervention for and on behalf of all the petitioners named and for the benefit of all who have or claim an interest in and to said fund.

R. J. FERGUSON.

Subscribed and sworn to before me this 23d day of February, 1910.

J. W. ROBINSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

[**Notice of Petition in Intervention.**]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

To W. M. Russell and W. F. Hays and to Their
Solicitors:

Take notice that the foregoing petition in intervention will be presented to the Circuit Court at the Circuit Courtroom at Seattle, Washington, on February 28, 1910, at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, at which time the Court will be requested to permit the parties named to intervene herein in so far as the matter relates to the fund in the registry of the court collected on execution herein upon the judgment assigned by the said Carrau to said Robinson.

JAMES J. GODFREY,
J. W. ROBINSON,
Solicitors for Petitioners.

Service of the foregoing notice and copy of the petition in intervention admitted this February 24, 1910.

W. F. HAYS,
ROBERT H. LINDSAY,
For Russell.

[Endorsed]: Notice and Petition. Filed U. S. Circuit Court, Western District of Washington. Feb. 24, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*United States Circuit Court for the Western District
of Washington.*

No. 943.

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

**Special Appearance [of Attorneys for W. M. Rus-
sell].**

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for W. M. Russell, in the above-entitled cause; and service of all subsequent papers, except writs and process, may be made upon said W. M. Russell, by leaving the same with

REYNOLDS, BALLINGER & HUTSON,
Office Address: 533 Pioneer Bldg., Seattle, Wash.

[Endorsed]: Special Appearance. Filed U. S. Circuit Court, Western District of Washington, Feb. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Order or Decree Denying Petition to Intervene.]

In the Circuit Court of the United States for the District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

ORDER DENYING PETITION OF INTERVENORS.

On this 28th day of February, 1910, petition of R. J. Ferguson, Henry Varian, Jack Barberis and others to be allowed to intervene in the above-entitled proceeding with reference to the distribution of the funds collected therein upon the judgment for costs, came on for hearing, J. W. Robinson, Esq., appearing for petitioners, and W. F. Hays, Esq., appearing specially in behalf of himself and W. M. Russell and Chas. T. Hutson appearing specially in behalf of W. M. Russell, said special appearance being for the purpose, and for the purpose only, of questioning the jurisdiction of the Court, and argument of counsel being had and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said petition to be allowed to intervene be, and the same hereby is denied.

Done this 28th day of Feby., 1910.

C. H. HANFORD,
Judge.

To the foregoing order, said R. J. Ferguson, Henry Varian, Jack Barberis and others, by their attorney, hereby excepts, said exception being allowed.

C. H. HANFORD,
Judge.

[Endorsed]: Order Denying Petition of Interveners. Filed U. S. Circuit Court, Western District of Washington, Feb. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Order or Decree Denying Request for Findings.]

In the Circuit Court of the United States for the District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

ORDER DENYING REQUEST FOR FINDINGS.

On this 28th day of February, 1910, the application requiring W. F. Hays and W. M. Russell, by their said attorneys, to present findings of fact and

conclusions of law responsive to the Memorandum Decision filed herein on July 6, 1909, came on for hearing, J. W. Robinson, Esq., representing himself, and W. F. Hays, Esq., appearing specially in behalf of himself and W. M. Russell, and Chas. T. Hutson appearing specially in behalf of W. M. Russell, said special appearances being for the purpose, and for the purpose only, of questioning the jurisdiction of the Court, and argument of counsel being had and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said request for findings be, and the same hereby is denied.

Done this 28th day of Feby., 1910.

C. H. HANFORD,
Judge.

To the foregoing order, said J. W. Robinson excepts, said exception being allowed.

C. H. HANFORD,
Judge.

[Endorsed]: Order Denying Request for Findings. Filed U. S. Circuit Court, Western District of Washington, Feb. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

**[Order or Decree Fixing Amount of Bond on Appeal
and Concerning Repayment of Moneys into
Registry of Court.]**

*In the Circuit Court of the United States for the
District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

**ORDER GRANTING SUPERSEDEAS AND RE-
QUIRING RETURN OF FUNDS.**

On this 28th day of February, 1910, the show-cause order heretofore issued in the above-entitled matter requiring W. F. Hays and W. M. Russell to appear and show cause why funds in the registry of the court distributed to said W. F. Hays and W. M. Russell should not be returned into the registry of the court pending appeal, came on for hearing, J. W. Robinson, Esq., appearing for himself, and W. F. Hayes, Esq., appearing specially in behalf of himself and W. M. Russell, and Chas. T. Hutson appearing specially for W. M. Russell, said special appearance being for the purpose, and for the purpose only, of questioning the jurisdiction of the Court, and argument of counsel being had and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,

1. That a supersedeas bond on appeal from the order of distribution heretofore entered herein be, and the same is fixed in the sum of One Thousand (\$1,000.00) Dollars;

2. That upon the filing of said supersedeas bond by J. W. Robinson in the Clerk's office of this Court, and the approval of such bond by this Court, that W. F. Hays repay into the registry of the court the sum of Four Hundred and Ninety-six and 33/100 (\$496.33) Dollars, and that W. M. Russell repay into the registry of the court the sum of Seventeen Hundred and Ninety (\$1790.00) Dollars, said sums having been withdrawn from the registry of the court on an order of the Court heretofore entered herein on January 25th, 1910.

Dated this 28th day of February, 1910.

C. H. HANFORD,

Judge.

To the foregoing order, and all thereof, said W. F. Hays and said W. M. Russell, by their said attorneys, duly except, said exceptions being allowed.

C. H. HANFORD,

Judge.

And to so much of the foregoing order requiring a supersedeas bond in the sum of One Thousand (\$1,000.00) Dollars, said J. W. Robinson duly excepts, said exception being allowed.

C. H. HANFORD,

Judge.

[Endorsed]: Order Granting Supersedeas and Requiring Return of Funds. Filed U. S. Circuit Court, Western District of Washington, Feb. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

In the Circuit Court of the United States for the District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Respondents.

Order [or Decree] Granting Motion to Strike Petition of J. W. Robinson to Distribute Funds Pro Rata.

On this 24th day of January, 1910, the motion to strike the petition of J. W. Robinson requesting distribution of funds collected in the above-entitled matter upon the judgment for costs pro rata instead of in accordance with the memorandum decision heretofore entered herein on July 6, 1909, came on for hearing, J. W. Robinson, Esq., having filed a written brief therein on his own behalf, and W. F. Hays, Esq., appearing for himself and W. M. Russell, and argument of counsel being had and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the motion to strike the petition of

said J. W. Robinson requesting distribution of funds collected in the above-entitled matter upon the judgment for costs pro rata instead of in accordance with the memorandum decision heretofore entered herein on July 6, 1909, be and the same hereby is granted.

Dated this 28th day of Feby., 1910.

C. H. HANFORD,
Judge.

To the foregoing order J. W. Robinson excepts, said exception being allowed.

C. H. HANFORD,
Judge.

[Endorsed]: Order Granting Motion to Strike Petition of J. W. Robinson to Distribute Funds Pro Rata. Filed U. S. Circuit Court, Western District of Washington, Feb. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Western Division.*

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

**Bill of Exceptions and Proceedings at Trial of the
Establishment of the Lien Claim of W. F. Hays
Herein.**

This was a proceeding upon a show-cause order against W. F. Hays requiring him to establish his lien claim filed herein in which he claimed a lien against the judgment for costs herein, which judgment had been rendered in favor of Marie Carrau and against the complainants in the above-entitled cause, and thereafter assigned upon the records herein to J. W. Robinson by Marie Carrau, and based upon said lien claim proceedings were had as shown by the record herein, being the shorthand notes taken at the time and extended, and which are in words and figures as follows, to wit:

[Proceedings Had October 30, 1908.]

*In the Circuit Court of the United States for the
Western District of Washington, Western Division.*

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

Now on this October 30, 1908, this cause coming on for hearing upon the show-cause order issued herein against W. F. Hays requiring him to establish his claim of lien herein before the Honorable C. H.

Hanford, Judge, W. F. Hays appearing in person and with him appeared the Honorable J. B. Reavis, a solicitor of this court, and J. W. Robinson, assignee of the judgment herein, appeared in person and with him appeared James J. Godfrey, solicitors in opposition to said lien claim, and thereupon the following proceedings were had:

Mr. REAVIS.—If your Honor please, I was quite recently spoken to by Mr. Hays with reference to this case, and upon an examination of the papers before the Court it would seem that it is all of record in the contracts that are here, for counsel fees, and there is a dispute or controversy between counsel as to a certain fund. It occurred to me that this fund is not available—not yet in the custody of either one of them, and it would seem that first the fund should be placed here and this controversy taken up at that time.

COURT.—The Court has issued an order to show cause in order to settle the question as to who was entitled to take the necessary steps to get this fund. Mr. Hays has initiated proceedings to collect it, and on examination of the record I find that he is not entitled to proceed in that manner on his own initiative. Now, if there is anything further to be done, it ought to be ascertained who should push the matter.

Mr. HAYS.—If there is any way to get this money in court and settle it afterwards I am perfectly willing. It is a matter of small concern to me.

COURT.—The clerk will not issue any more writs on the praecipe of Mr. Hays. Now, whether any-

body else can get a writ is a matter I don't know about.

Mr. HAYS.—May it please your Honor, so far as the issuance of writs are concerned, I am perfectly willing, in fact anxious to be relieved of that duty, but this judgment was rendered by the Supreme Court of the United States and entered in your Honor's court here, against these defendants about two years ago. No step has been taken to enforce its collection. So far as the distribution of the money is concerned I have an interest in this judgment to the extent of moneys that I myself have advanced in the case to which I would be entitled to a final order of this Court, and the others who have advanced funds for the plaintiff in the original suit. This controversy now seems to me quite premature. As your Honor has said, however, an order has been entered by your Honor citing the defendant to show cause. I was not aware that such an order had been entered, but I received a communication from counsel here showing a reason why at this stage there should be a definite interest made to appear before this Court in this judgment. I filed a lien as a counsel in the case, as attorney in the case, upon the judgment, for the purpose of preserving the fund to the time that the money might be subject to distribution, and then if that lien is improper or illegal it will be the duty of the Court to determine. Much money, perhaps, may yet be expended in the enforcement of this judgment. It may be necessary to again appeal this case to the Supreme Court of the United States, as learned

counsel against whom this judgment rests seems determined not to pay it. Your Honor entered judgment some four years ago for this original sum, from which judgment an appeal was taken to the Supreme Court of the United States. I am informed and understand it is not the purpose to pay this judgment, but to indefinitely postpone and defeat it, and it occurs to me that this controversy between counsel, the assignee of this judgment, and myself, is entirely premature and can be of very little avail. In the attempt to enforce this judgment some few weeks ago it was necessary to expend something like fifteen or twenty-five dollars. It could not be said that this money was expended in a suit or cause unauthorized. It is the duty of counsel in every case to so conduct the case that the defendant or plaintiff in the case shall have the fruits of whatever they get in the form of a judgment. I was not encroaching upon my rights, and understood my right or duty as counsel in the case to insist upon the enforcement of that judgment, and your Honor in issuing that order, it was with full authority and in fact it is the duty of this Honorable Court to have issued the order, and to have proper garnishment proceedings taken in the case. The record shows that this lien was effected or filed according to the statutes of this state. It was authorized. Now, it would not be contended—I do not contend for one moment that one dollar of that money if paid into the treasury of this court, that it would be distributable until there was a determination by this Court as to who had a right to re-

ceive it. I should be very glad to be relieved of the trouble and the liability. I have more to do than I can actually do just now to undertake to collect the enforcement of this judgment against this recalcitrant defendant. I could get on the witness-stand this morning and tell your Honor just what money I have paid out. I know I have paid out hundreds and perhaps a thousand dollars I would not charge against this judgment. I do not see how, even if your Honor has all the evidence in on the side of the plaintiff, as assignee, or on the side of myself, who seeks to enforce the lien for moneys advanced,—I do not see how your Honor could now determine how much the interest would be in the judgment. If I can relieve your Honor of any embarrassment in any way it is my pleasure to do so. I have no controversy with counsel or controversy with this plaintiff, Miss Carrau, as to how this money shall be distributed, but I only want to enforce the judgment, and it seems to me that it would be almost impossible to arrive at a conclusion. Say your Honor would find I have a half interest in this and Miss Carrau has another half. Miss Carrau's assignee is unwilling to proceed according to my information as to how it should be enforced and trouble arises,—one-half of the judgment claimed by her assignee and another half or fourth or whatever it may be by myself, how are we going to proceed? We are not in harmony; we do not agree on the theories of the law. Learned counsel has his views and I have mine and we do not agree, but it seems to me this is not subject to determination to-day. It would be equiva-

lent to a distribution of this judgment if your Honor should make a judgment to-day that one portion belongs to Hays and the other portion to Robinson. Here we would be operating at off purposes, and I do not see how it would be consistent that we go ahead and determine. Now, as far as I am concerned, I am perfectly willing to go ahead, if I can relieve the Court. All I want is this: I want that judgment enforced and this Court would be absolutely in control of this money until it is finally paid out, and could not be paid out as the record stands now without an order from your Honor, and it seems to me it is in the treasury of this court at this time. I do not think counsel will contend that there has not been some money expended and some money advanced in the case. I do not think he will contend that for a moment, and if the amount be ever so small it would be subject to a future distribution. As I have said, however, let Mr. Robinson take and assume the duty of enforcing the collection of that fund and pay it into this court, or let Mr. Robinson agree upon some outside party to do that, and I will be willing that my portion shall bear its equal proportion for the trouble and expense. I am willing on the record of this court—I do not have to do it, but in open court I state I am willing to have your Honor dictate who shall enforce the collection of this judgment. I would be glad to be relieved of that burden. I do not want it and I do not see any necessity for trouble between counsel or warfare as to how the money shall be distributed if it ever shall be obtained.

Mr. ROBINSON.—If your Honor please, of course this application has been made for this show-cause order and the reason for bringing it to the attention of the Court was it might be disposed of. I have been unable to seek an enforcement of this judgment while Mr. Hays was contending that he was the only attorney in the case who had any right to move in the matter, and this has been his contention upon the record—as shown by the record. I do not think that the presence of the money in the registry of the court has anything whatever to do with the settlement of the lien of Mr. Hays, or his right to a lien. That is a matter that ought to be investigated and determined without any regard to the distribution. That is an after consideration should ever this money be collected. I certainly cannot be expected to seek to enforce this judgment while it is disputed as to who is the attorney in the case, and certainly I have no quarrel with Mr. Hays about the matter; only I want to settle it. Now, our statute requires that the Court shall summarily inquire into the facts on which the claim of lien is founded and determine the same, and it seems to me as though at this time your Honor ought to proceed to hear that question as to whether or not he has a lien. We are here for that purpose to-day as we understand it.

COURT.—You may go on, I will hear it. (To Mr. HAYS.) You may proceed in your own way to show me you are entitled to proceed. You are here now to show me you are entitled to the lien.

Mr. HAYS.—I guess it will not be questioned but I was employed as counsel. I will introduce the

copies of the contract if it is denied. Must I prove it?

Mr. GODFREY.—Yes.

Mr. HAYS.—I have, may it please your Honor, memorandum of copy of contract entered into between the plaintiff in this case, Marie Carrau, and myself. The copy, however, is not certified and the original is in my papers. I have not been able to get a number of things this morning, I have been engaged in other matters and I don't think, if the lady has a copy herself, I don't think but what the copy is sufficient for the purposes of this investigation.

Mr. GODFREY.—We would like to have Mr. Hays sworn before this proceeding goes any further.

(Whereupon Mr. Hays was duly sworn by the clerk of the court.)

[Testimony of W. F. Hays.]

Mr. HAYS.—I will offer this contract as a copy of an original contract entered into on the 10th day of October, 1900, the original of which I have among my papers but which I was unable to lay my hand on this morning, and I ask at this time that the defendant, Marie Carrau, be ordered by your Honor to produce the original a copy of which she also has.

Mr. GODFREY.—We will have to object. We demand that the original be produced.

COURT.—If you have the original or duplicate of the original you can produce it.

Mr. GODFREY.—Mr. Hays just testified—this contract I never saw or heard of before and Mr. Hays stated he has the original in his office. We

(Testimony of W. F. Hays.)

have no copy. We never knew of the existence of this contract. The contract we have bears the date of October first, 1901.

COURT.—You may produce that.

(Mr. Hays reads contract, and the same is admitted in evidence as Exhibit 1.)

Mr. HAYS.—I wish to read a copy of the first contract entered into with the lady. This is dated October 10, 1900.

COURT.—I cannot admit a copy.

Mr. HAYS.—I will furnish the original and the signature of the party. I guess I can prove the signature.

Mr. ROBINSON.—He may use this copy with the understanding he presents to your Honor the original.

COURT.—All right, you may read it.

(Mr. Hays reads contract, and the same is admitted in evidence, as Exhibit 2.)

Mr. HAYS.—I offer another copy of a contract in which J. W. Robinson was employed. It is not the original and if counsel objects to it I would like him to produce the original.

Mr. GODFREY.—What is the purpose of this?

Mr. HAYS.—That lien claim is being combatted by an innocent purchaser, an assignee, who I want to show this Court was cognizant of every step in this case, knows of all the things that have taken place in the case from its inception. I can show he was associate counsel in this case.

(Testimony of W. F. Hays.)

COURT.—You don't have to meet or anticipate any defense of that kind. Show what your rights are; that is all you are required to do.

Mr. HAYS.—I want to introduce this contract to show your relation in this case.

COURT.—That is not a relevant question. If you show you have a lien I guess Judge Robinson is not here to get under that by any plea of being an innocent purchaser.

Mr. HAYS.—I offer in evidence a contract—

Mr. GODFREY.—For what purpose? Is this offered for the purpose of establishing the lien? We object to the introduction of this contract between these parties and Mr. Russell on the ground it is incompetent, irrelevant and immaterial.

COURT.—Who are the parties?

Mr. HAYS.—Marie Carrau, myself and William M. Russell.

COURT.—What is the date of it?

Mr. HAYS.—April 7, 1902.

COURT.—Let it go in. I overrule the objection.

(Mr. Hays reads contract, and the same is admitted in evidence as Exhibit 3.)

[Testimony of W. M. Russell.]

W. M. RUSSELL, being first duly sworn upon oath, testified as follows:

Q. (Mr. HAYS.) You have just heard read—I assume you heard, a contract between yourself, Miss Carrau and myself; state to this Court what other moneys than those you have advanced to me or to

(Testimony of W. M. Russell.)

Miss Carrau that was expended in this estate, in this litigation?

Mr. GODFREY.—I object to the form and substance of the question entirely too scattered. It is incompetent and immaterial also.

COURT.—Objection overruled.

A. Shall I state in detail?

Q. Make the sum total?

A. About sixteen hundred dollars; ten hundred and fifty, the exact amount I don't know, was advanced at the first proceeding.

Q. In the Federal Court? State what you have done, if anything, with reference to the recovering of the moneys by you so advanced in the Federal Court.

A. I made no effort to recover them until I spoke to Miss Carrau about it at the time this case was dismissed in the Supreme Court and she promised to assign them to me. She was very friendly. The next day—afterwards she told me she had assigned them to Judge Robinson. I afterwards received a letter signed by Judge Robinson in which he said he was only collecting it to distribute it among the parties who had advanced it to her. I assigned the claim to Mr. Hays for collection about three or four months ago as near as I remember.

Q. Before this notice of assignment to Robinson or after? A. I don't know.

Q. Was it before that letter was received from Judge Robinson?

(Testimony of W. M. Russell.)

A. It was afterwards; I didn't receive any letter from him.

Q. The letter that was exhibited from him; refresh your recollection, Mr. Russell; wasn't your assignment to me made many months before you knew that Miss Carrau had assigned the judgment or attempted to assign the judgment to Judge Robinson?

A. That I don't really know. You could tell that by the date of the assignment. The assignment was for a specific purpose, was it not?

Q. You remember the assignment was made that I should proceed against the judgment in the Federal Court to enforce collection? A. Yes.

Q. And at that time you advanced some money—
Mr. GODFREY.—I object to Mr. Hays testifying.
COURT.—Objection sustained.

Mr. HAYS.—Does the Court understand the amount?

COURT.—Yes.

(Witness excused.)

**[Testimony of W. F. Hays—Recalled on His Own
Behalf.]**

W. F. HAYS, recalled on his own behalf.

About the time of my retention as counsel, the 10th of October, 1900, recognizing the merits and justness of the claim of Miss Carrau and being advised by her that she was entitled—

Mr. GODFREY.—I would like to suggest that as Mr. Hays is represented here in court by counsel, that Judge Reavis propound the questions and Mr. Hays make the replies so we can make objections.

(Testimony of W. F. Hays.)

Mr. HAYS.—I thought the Court was being informed in this case as to the merits and not as to any technical matter.

COURT.—Go ahead.

Mr. HAYS.—At this time I learned of the situation of affairs and understood it was necessary, of course, from time to time to hypothecate prospective interests in this property in some form to raise money to litigate the matter; that it would be a very long drawn out and stubborn litigation, so I talked with Miss Carrau concerning the matter of getting some ready money to start in, and she was acquainted with Mr. Russell, and Mr. Russell was acquainted with her and was favorable to her and desirous to see her succeed in the establishment of her rights, and by appointment I met with her and Mr. Russell and we talked over the case. I went into the case very fully with Mr. Russell, and he, through his desire for her success, advanced in the first instance the sum of about two hundred fifty dollars as I recall. He gave Miss Carrau a check; I think it was for two hundred or two hundred and fifty, I have forgotten which it was. I think that was the first money that Mr. Russell gave. Miss Carrau drew that money; one-half she kept and one-half she gave to me. She needed money for her own uses. I advised her not to work out, not to give lessons, not to teach, and it was necessary for her to teach to make her living (Now, you need not laugh, Miss Carrau, what I tell you is true). I advised against her doing that because I thought there would be efforts made to mislead her and to have

(Testimony of W. F. Hays.)

her make statements that might ultimately confuse and defeat her in the establishment of her rights in the fight that was bound to come. I told her that she was not well dressed; that she ought to be dressed in mourning.

Mr. GODFREY.—I am going to object to this extraneous matter.

Mr. HAYS.—The first thing I did was to advance thirty dollars. That was the first advance; the next advance I made.

Mr. GODFREY.—What was the date?

A. About the 10th. About the time of the employment. She and her two sisters were present at the time. It was first supposed she would need ten and I first offered to give the ten and then it was understood that it required ten for each one, so I gave twenty more, which was thirty; that was the first advance.

Mr. GODFREY.—When was that?

A. The same time; about the 10th of October, 1900. The next moneys that I paid out direct for her was in filing the petition to probate the will in the Superior Court of King County. That was on the 8th of March, 1900.

Mr. GODFREY.—1901 you mean?

A. Yes, 8th of March, 1901. The next moneys I advanced—

Q. How much was that, Mr. Hays?

A. Really, I don't remember. A few dollars; five or ten dollars, a small amount. Had naturalization papers taken out for her December, or rather

(Testimony of W. F. Hays.)

citizens' papers. And the next moneys I advanced was in the United States Circuit Court to appear here in defense against a suit that had been instituted by Hannah O'Callahan and Edward Corcoran to contest this decree of probate. That was sometime in June, I think, of 1901. I think the first payment was ten dollars. I don't know just exactly, but not less than that. And directly after that I paid out moneys for stenographic work of which I kept no account, but an immense amount of work was done by private stenographers for which I paid. The case was referred by this Honorable Court for taking testimony before a Master, but before that was done I must say that depositions were taken in Ireland by the complainants to establish heirships. It seemed to me it would be necessary to have the defendant represented by counsel in Ireland and to this end I had correspondence with them from time to time, and I sent for the first thing, I think, something in the way of an affidavit, five or ten, I have forgotten now just exactly. Later on I sent one hundred.

Mr. GODFREY.—When was this you sent the five or ten?

A. I can't tell; it must have been in the year of 1901. It may have been 1902. It must have been the latter part of the year 1901. I think I could get the original papers, but as I stated to you I mislaid them this morning. I can find them in the course of time. I never lost papers. I never did. The next thing I did was to send to Donogan one hundred

(Testimony of W. F. Hays.)

or one hundred and fifty dollars. I have the receipt. I telegraphed it—

Q. Will you give us the dates?

A. It will be impossible to give the exact dates.

Q. Approximately?

A. It must have been along in September or October or November. Along in the fall of the year; might have been the following year. I don't know when. It was during the contest of that will; to take the testimony. I have no doubt that the Western Union Telegraph Office here has duplicates of these various telegrams. I sent in all four hundred fifty dollars as my recollection is. It was four hundred or four hundred and fifty. I have the originals somewhere among my papers. The original receipts of the telegraph company here. Their books will undoubtedly show just the dates and the amount sent by me to these people. I paid for copies of the statutes of Pennsylvania and for copying off and searching them out in the library at San Francisco in my search and effort to run down the original of the law referring to nuncupative wills, and on that trip in charging Miss Carrau with nothing of that except the expense of the library; that would be properly chargeable. My personal expenses I did not charge up to her as any claim against her at all. I made two or three trips to San Francisco in the interest of these defendants. The next money that I advanced was one hundred nineteen dollars.

Q. How much was that?

A. Not over ten dollars; something like that.

(Testimony of W. F. Hays.)

The next advance I made was for the purpose of printing a brief; a brief of the case appealed to the United States Circuit Court from this Honorable Court. I wrote and had a brief printed here which was filed and on which the case was ultimately tried in the United States Circuit Court of Appeals. I paid, I think it was one hundred nineteen dollars for the printing of that brief.

Q. When was that?

A. It was either February—why, it was within a very few days of the time the case would be dismissed in the United States Circuit Court for not having the brief filed in that court. If it had been one day later under the rules of that court this case would have been dismissed in the United States Circuit Court of Appeals, as I understand the law and the rules. I filed that brief in this court to be sure it would be there in time and I telegraphed to the clerk of the United States Circuit Court I had expressed it to him by Wells-Fargo Express and for him to wire me the date of its receipt and filing in that court that I might know it was filed there in time.

Q. Do you recall that date?

A. I think it was about the 26th or 28th of March, 1902 or three. But that is of public record. It was eleven days before the hearing of the argument in that case that that brief was filed in the United States Circuit Court of Appeals. That was one hundred nineteen dollars, as I recollect it. I afterwards in the Supreme Court of the United States filed a mo-

(Testimony of W. F. Hays.)

tion which I had printed, to dismiss the appeal that was taken from the United States Circuit Court of Appeals to that court by the contestants, and accompanying the motion I also filed a brief in support of that motion, both of which were printed separately; at an expense of something like twenty-five dollars. About twenty-five dollars was the expense of these two documents. I then filed in connection with that a separate brief subsequently in that court and associated with me in the case was the late Senator John H. Mitchell. He was on all the briefs on the motion to dismiss and on the brief in support of that motion and on the brief on the merits of the case. I made two trips to Washington City. I didn't charge them, however, on this case. While I was there there was a movement made in the State court I knew nothing about, but when I came back I found the Supreme Court of this State had taken hold of the case and had assumed jurisdiction of the case, as I thought without basis, and I filed a petition for rehearing in that court; also with the late Senator John H. Mitchell. We spent several days in looking up the records and books and finally we filed a petition for a rehearing for the purpose of carrying the case to the Supreme Court of the United States on a writ of error. That petition was quite lengthy. It cost several dollars stenographic work. Probably it would be safe to say twenty or twenty-five dollars; certainly not less than ten or fifteen. I have forgotten what I paid the stenographer. I had a stenographer at work for several days while we were there in attendance.

(Testimony of W. F. Hays.)

Q. Will you please give us the items, the dates and amount? A. That would be impossible.

Q. Approximately?

A. That is what I am endeavoring to do, is to approximate these several amounts. I have since instituted proceedings in the State court now pending before Judge Morris in which I seek to establish Marie Carrau's right to that property and the property of the estate of John Sullivan, and it is prepared in such a form and manner in the event of defeat in the State court I shall carry it to the Supreme Court of the United States. The expense of writing the petition in that case has been a little over one hundred dollars, writing the petition, getting records and copies, etc., and I actually paid to the stenographer for the work of writing in, I think, fifty-seven dollars. Of course I paid a filing fee in that court and that is an expense, I think, incident to Miss Carrau's rights as a part of my general employment and retainer by her. That case is pending. Of course it would not be decided and could not by the ordinary routine of time in passing through these various courts; could not be determined under three or four years, maybe four years. If things go well and we get quick action might get it through the Supreme Court of the United States in two years and a half, but I hardly think it. I have absolute confidence in the result. I have no fear whatever but what I will win out. I do not expect to win out in the State court and I think it is going to cost three or four thousand dollars to carry that case through.

(Testimony of W. F. Hays.)

The records are voluminous and have to be copied, transcribed and then printed—

COURT.—All that matter in the future is immaterial here now.

A. I want to say I have a contingent interest in the future that is what I stated that for.

COURT.—Is this money you have expended your own money or Mr. Russell's?

A. Part of it was Mr. Russell's. The moneys I sent to Ireland was Mr. Russell's at that time, and of course you understand I could not tell. The funds were mingled and I paid it out when it was necessary to pay it out.

Cross-examination.

Q. (Mr. GODFREY.) Did you keep any books with reference to the disbursements you made on behalf of Miss Carrau with reference to this Sullivan matter? A. What is it?

Q. Did you keep any books or did you take any vouchers or receipts for disbursements you made on behalf of Miss Carrau in reference to the Sullivan estate in the Federal Court, the first proceedings?

A. I don't know whether the clerk ever issued any receipts to me or not, I am not certain whether I took any receipts. As far as the money sent to Ireland is concerned I did have receipts from the Western Union Telegraph Company.

Q. Can you produce them?

A. Yes, I think so, without any doubt.

Q. And you will? A. Yes.

(Testimony of W. F. Hays.)

Q. Did you keep any book accounts at all in reference to the disbursements for and on behalf of Marie Carrau?

A. No, I never did; never kept any account. I remember these items.

Q. You are testifying from memory now?

A. Altogether.

Q. You heard Mr. Russell's testimony, Mr. Hays?

A. Yes.

Q. You remember that he stated that he handed you sixteen hundred dollars, altogether, for Miss Carrau?

A. Yes, he advanced to Miss Carrau in connection with this joint litigation. I think Mr. Russell did not clearly define himself, The moneys he advanced to me or through me that were used by me were really used in the Federal Court; they were not used in the State court, and I think there was five hundred dollars by him so advanced that was used exclusively in the State court; that is my understanding in talking with him.

Q. Do you recall, Mr. Hays, Mr. Russell having advanced Miss Carrau four hundred twenty-five or four hundred fifty—two hundred and fifty, and you borrowed it from Miss Carrau and told her you would return it in a few days?

A. No, under no circumstances. Miss Carrau was, as I stated, needing money. We got this two hundred twenty-five from Mr. Russell, two hundred fifty; it was not to be used for our personal uses. Miss Carrau gave me of the two hundred fifty, one

(Testimony of W. F. Hays.)

hundred twenty-five dollars at the time, and she needed the money for her own uses and for the time being I did not need to use that amount of money, did not need it at that particular time. Consequently I thought it was entirely proper for her to have one hundred twenty-five. I went on the note to Mr. Russell, as I recollect it, and signed the note jointly with her for the two hundred and fifty.

Q. Mr. Hays, is it not a fact that Mr. Russell was a friend of Miss Carrau's and was furnishing this money for her?

A. I assumed that, of course. I don't think Mr. Russell would have furnished Miss Carrau this money out of his friendship had it not been for my assuring him of the possibility of her winning this large estate. I do not think Mr. Russell anticipated Miss Carrau would use any portion of this money for her personal uses. We did not take it that way when we were talking to him. I am certain Mr. Russell would not have advanced Miss Carrau a cent of money but for what I represented to him about that estate.

Q. Do you remember the time of making this first contract you have introduced here to-day?

A. It shows the date.

Q. October 10th, 1900. You remember the conversation preliminary to making that contract?

A. Substantially.

Q. I want to know if you did not at that time promise Miss Carrau you would furnish the expense incident to that litigation?

(Testimony of W. F. Hays.)

A. Never at any time?

Q. I think you demand fifty per cent of this estate if you were going to advance anything?

A. After the payment of all expenses. After the payment of all expenses that we were out in the employment of counsel and the payment of fees incidental to the contest; then I was to receive half of the net proceeds.

Q. This fight that you took up on behalf of Miss Carrau was on an ordinary contingent contract, was it not?

A. It speaks for itself.

Q. The original contract is not here?

A. You have the original.

Q. Not the first contract. Are you in a position to say definitely and positively that you did not so represent to Miss Carrau at the time she employed you as her leading counsel or as her attorney in this case October 10, 1900?

A. Most certain I never told Miss Carrau I would advance the cost. I told her I would assist in the financing and fighting of the case. We would have to finance it and hypothecate from time to time our interest in the property, our future and contingent interest. That contract speaks for itself. My counsel does not object; he sleeps while I am talking. I say that you know as a lawyer that contract is the contract by which we are bound. Whatever conversations may have been had between Miss Carrau and myself are merged in that writing. She could not testify as to anything or could I. Therefore I

(Testimony of W. F. Hays.)

am not undertaking to do that which the law will not permit.

Q. Who was to advance the costs?

A. Why, Miss Carrau, of course.

Q. Miss Carrau? A. Certainly.

Q. Who was to advance the costs at the time the litigation was started?

A. We could not tell from whom we could get it.

Q. You, as a lawyer, know and must know, and you do know that some person had to advance the costs; did you undertake to finance the matter?

A. Under no circumstances; excepting with the co-operation and consent of Miss Carrau that we would from time to time borrow. As you have seen by this contract, Miss Carrau is to pay a thousand for the use of four hundred twenty-five. Now, that thousand must come out of her property and if it does not I agree to pay it all. I agreed with Mr. Russell that if the case was lost and if there was no property out of which the fund could be returned, then I would repay it and that I would do.

Q. Your memory is failing, and for the purpose of refreshing you I want to ask you this: Do you remember the preliminary conversation which led up to this contract wherein Miss Carrau offered you ten or twenty per cent or some such amount, and you declined and stated you had to have fifty per cent because you were really the defendant in the case?

A. Miss Carrau never intimated the question of percentage or price or anything else of our employment.

(Testimony of W. F. Hays.)

Q. You swear to that positively?

A. Most certainly.

Q. Why was it necessary, Mr. Hays, to draw a second contract after the contract you drew on the 10th of October, 1900?

A. I realized then, as I did not in the first contract, that we were going to have a very stubborn fight. There had been filed as many as twenty or thirty claims of heirship with nearly that many different law firms representing them. I found that there would undoubtedly be adverse interests coming in as the reward for which the battle would be waged was large. There were attorneys who were desirous of making money, making their way in the world, who would be anxious, perhaps, to come into the case, and that they might influence the action of my client to either take adverse views of me or want to benefit and favor some one, and for that reason I made up my mind it was proper, and as a precaution against such a contingency, to draw a contract before I did any actual work in her case that would prevent any such possible clash and would prevent her employing counsel who might in good faith represent her and interfere with my conducting her case and result in her ultimate defeat and my defeat too. As I was taking my compensation wholly out of the results of that fight, must rely wholly upon its results I could not afford to jeopardize the results by leaving it open that she might of her own wish and will employ whomsoever she pleased. The results of the case have shown that

(Testimony of W. F. Hays.)

the employment of other counsel has made a great confusion.

Q. Well, now, Mr. Hays, in what particulars does the contract of March 7, 1901, differ from the contract of October 10, 1900?

A. It prevents her from employing counsel without my written consent. As my recollection of it is the principal reason for the drafting of that contract.

Q. And it gives you a full fifty per cent of the estate upon recovery?

A. It speaks for itself, sir; you can read and you can construe.

Q. It gives you fifty per cent of the estate upon recovery. It does not bind you to do anything except to appear as attorney for Miss Carrau; was that the understanding between you that you simply appeared here as her attorney?

A. Do you read that contract it does not bind me to do anything?

Q. You simply appeared as her attorney, more than that you did not agree to do?

A. Nothing further. I was not her confessor and nothing but her attorney.

Q. And with reference to the financial side of it she was to handle that herself entirely?

A. Not at all, not at all. She was unacquainted with banks and unacquainted with those who would advance money. I expected to have to do that part, to assist her in every stage of the game, which I did.

Q. You overlooked to set it out in your contract?

(Testimony of W. F. Hays.)

A. Well, you are insisting upon my telling you something. You wanted it and I told it.

Q. Do you recall the exact amount of money or approximately the amount of money you assisted Miss Carrau in raising in connection with this litigation?

A. The amount I assisted her in raising?

Q. Yes?

A. I should say in the neighborhood of sixteen hundred dollars.

Q. Do you recall the time, Mr. Hays, in 1902, when the appeal was taken to the Circuit Court of the United States for the District of Washington; do you recall the time you appealed from the decision of the Circuit Court of the United States for the Western District of Washington in connection with the O'Callahan-Carrau matter?

A. Yes, very well.

Q. Did you furnish any of the money for the printing of the transcript of that record?

A. No, I don't think I did. I don't think I furnished any money. I offered to furnish it.

Q. You offered to? A. Yes.

Q. To whom did you make that offer?

A. I made it to J. P. Houser. I made it to Miss Carrau.

Q. Do you know what that record cost to print, Mr. Hays?

A. Not exactly; no. I don't remember. I had a draft of twenty-three hundred dollars and I understood that would be sufficient to cover it and if it was

(Testimony of W. F. Hays.)

not I could get more. Miss Carrau called at my office afterwards and we talked over the matter and she said she would consider the matter and talk it over with her brother and sister, and I didn't see her any more.

Q. This twenty-three hundred dollars was your own personal money? A. Yes.

Q. No interest in this litigation?

A. No, it was not advanced at all.

Q. To whom did you make this offer of twenty-three hundred dollars?

A. I didn't make the offer to anyone, but I said I am prepared to go to the extent of that now, without raising further funds I am prepared to make that payment, and Russell told me he went to Miss Carrau and told her, and I think it was after that she called at my office and she said if she could get it from some other source she preferred to. I realize, as I recall it now, before I went east that the Court's decision would be rendered against her, so I prepared notice of appeal and the bond in blank to be filled out—

Q. Where was this?

A. Here in this court—prepared the bond and the notice of appeal and then when I returned—they had been executed on the blanks I had prepared and I found someone had erased a jurisdictional line in the notice of appeal which would have rendered the appeal futile and—

Q. Now, Mr. Hays, would you state or tell us as near as you can what time you sent this four hundred sixty-five dollars to Ireland?

(Testimony of W. F. Hays.)

A. I answered that several times; do you want me to say it again? I told you it was along—as near as I recollect it, it was while the examination was going on before Judge Smith. I recall one day I got a cablegram and I went over and cabled one hundred and fifty dollars.

Q. Was it prior to February, 1902, you sent that money?

A. It would be impossible for me to tell you from memory, but I can find it and give you that information. It was between 1901 and 1904; that is as near as I can give it to you from memory.

Q. You sent four hundred sixty-five, you testified; have you a check or receipt or some kind of voucher for that expenditure?

A. I don't know; I can't tell you. My papers have accumulated and I have moved twice or three times since and in many instances have thrown them away and others have been mixed up. It has been twelve years since we started pretty near—six years, it seems to me it has been twelve. It has been the longest kind of a siege, I know that.

Q. You have the receipts from the Western Union Telegraph Company?

A. I think I have. I will get those.

Q. You will find those?

A. Yes, I will get those and all the receipts I have. I will get all the receipts I have and bring them in and turn them over. That is all the use I have for them is to show what I actually paid out.

Q. Do you remember sometime in October or

(Testimony of W. F. Hays.)

November, 1901, that Mr. Howe, who was then the senior counsel for the O'Callahan and Corcoran people, securing an order of default against you?

A. Yes.

Q. And afterwards Judge Hanford permitted the case to be reopened on the payment of a twenty-five docket fee, do you recall that?

A. It was not a docket fee. It was twenty-five dollar punishment, penalty.

Q. No, I think not?

A. I think Mr. Howe remitted that to me.

Q. If you have made that as a charge against Miss Carrau or the Sullivan estate you are mistaken?

A. Entirely so. I think Mr. Howe remitted that; that is my recollection. My recollection is I offered to pay the money, but they paid it back or told me never to mind, he would receipt the docket or something like that; I don't know what. My recollection is I never had to pay it. At the time we made a five hundred dollar bet. I bet him three hundred against two hundred I would beat him in the Supreme Court of the United States. I never got the three hundred, though.

Q. Mr. Hays, in your own direct examination you testified to having paid the late John H. Mitchell six hundred dollars? A. In my what?

Q. You testified to having paid him some amount of money, six hundred dollars, I thought you said; when did you pay him this and where?

(Testimony of W. F. Hays.)

A. Oh, I paid Mitchell in Washington City and paid him in Portland and in Olympia, Washington, paid expenses, traveling expenses, made two trips to Washington; brought him out here twice.

Q. Have you kept any book accounts or memorandum of any kind in reference to that?

A. I don't know whether I have or not. I have forgotten whether I have any or not.

Q. Can you recall whether you paid him with gold coin or check? A. Always paid in cash.

Q. Did you usually take a receipt?

A. I don't believe I ever took a receipt from the Senator at any time.

Q. You and he were very good friends?

A. Very good, indeed.

Q. Do you recall giving him this six hundred dollars—was that in Washington City?

A. That was at different times I paid him.

Q. Never took a receipt for these disbursements at all?

A. Never took a receipt for anything I paid him. I don't recall it. I don't think I ever did. I never asked him for a receipt. He might have kept a memorandum—I think he did.

Q. How many trips to the city of Washington, D. C., have you made in connection with this case?

A. Two trips, but I am not charging any lien on this for anything I paid Senator Mitchell or anything I paid out. I am not asking this Court to take that into consideration. I am only asking that the lien I have against this judgment for costs here shall

(Testimony of W. F. Hays.)

be confined to the actual cash payments in connection with this present case.

Q. Can you give the date when Miss Carrau first wrote you a letter notifying you that you no longer represented her—removing you from the case?

A. I have that letter, but I can't tell you just when it was; it was away back in, I think, possibly 1904. It was after the case had been appealed, as I recollect it, or about the time of the appeal to the United States Circuit Court of Appeals. I believe it was before the case was appealed from this Court, but I have the original letter. I am keeping it as a souvenir.

Q. Can you give us the date of it?

A. I have answered your question, I could not, but I gave it as nearly as I could, but I have the original letter and will let you see it.

Q. You will produce the letter this afternoon?

A. I will if I can find it.

Q. In the event you cannot find it we have a copy of it—

A. I won't question it being correct, if she says it is a copy.

Q. At the time, Mr. Hays, that Hannah O'Callahan and Edward Corcoran first came into this case who presented this case to the Circuit Court here in Seattle?

A. Who presented it first on behalf of Miss Carrau?

Q. Did you?

A. Yes.

(Testimony of W. F. Hays.)

Q. Who presented the case in the Circuit Court of Appeals for Miss Carrau?

A. I—that is, I briefed the case and about the time that I filed my brief I got a wire from the east of the illness of my wife and I started east at the same time writing a letter and wiring to the party in San Francisco.

Q. (Mr. ROBINSON.) Was it not agreed between you and Miss Carrau when you entered into the contract originally that you were to finance the proposition and were to advance all the costs, whatever they amounted to and didn't you tell her at that time that you had thousands of dollars for that purpose and that you were not to get any expense money back unless you got it out of the suit; unless you won Miss Carrau—was that not true?

A. Absolutely not true.

(Witness excused.)

(Here a recess was taken until two o'clock P. M., of the same day, at which time court convened, all parties present as before, and the following proceedings were had:)

Mr. HAYS.—May it please your Honor, this morning on the introduction of testimony in connection with a copy of the contract with Miss Carrau, I didn't have the original and agreed to bring the original, but have not been able to find it; will you not allow the copy to be used.

Mr. ROBINSON.—We are willing that the copy should remain in. Let Mr. Godfrey examine it to see that it is a copy.

(Testimony of W. F. Hays.)

Mr. HAYS.—You are satisfied it is a correct copy, Mr. Godfrey?

Mr. GODFREY.—Yes.

Mr. HAYS.—I wish to introduce first, the receipts for moneys paid to the clerk of the Supreme Court of this State; a copy of a check given by the Scandinavian American Bank sent there to the clerk of the Supreme Court by the bank for forty-six dollars, upon November 23d, 1905, in pursuance to this letter from the clerk of the Supreme Court. (Mr. Hays reads letter.)

Mr. ROBINSON.—We make the objection to this, it is incompetent and immaterial and not in any way tending to establish the right of lien.

COURT.—I will let it go into the case. It is part of Mr. Hays' offer, subject to the objection.

Mr. HAYS.—I offer in evidence a receipt from Munsing Company, printers, dated January 27, 1903.

Mr. ROBINSON.—We make the same objection to this.

COURT.—Let it go in subject to the objection.

Mr. HAYS.—I stated it was one hundred nineteen and I see it is one hundred seventeen. The other two dollars I cannot account for unless it was the transmission of the briefs and the telegram; I had the figures one hundred nineteen in my mind; it is one hundred and seventeen.

Mr. HAYS.—I offer in evidence now two receipts one dated March 3d, at Seattle, Washington, and is money transferred by cable to Donogan, at Ireland, Cork.

(Testimony of W. F. Hays.)

Mr. ROBINSON.—We offer the same objection.

COURT.—Let it be admitted subject to the objection.

Mr. HAYS.—A check of April 7, 1902, to Collins, of Dublin, Ireland.

Mr. ROBINSON.—Same objection.

COURT.—Let it go in subject to the objection.

Mr. HAYS.—I offer memorandum of checks which were paid and drawn in my favor charging my account in the same bank, Washington National Bank, of even dates with those two drafts or checks.

Mr. ROBINSON.—Same objection to each offer—three of them, aren't they?

A. Yes: There is one I have not the original receipt for. I sent one hundred dollars at one time, and I don't remember, five or ten or fifteen at another time. I am certain I sent over four hundred and fifty. I may be wrong about the exact amount, but I know I sent over one hundred. I see these are one hundred and fifty each. I had no time to go through my things to get the receipts, but I can get them from the telegraph office.

Mr. HAYS.—I offer here a receipt for twenty-seven, printer of Washington, D. C., printing briefs. Those you have seen also, any objection?

COURT.—Let it be admitted subject to the objection.

Mr. HAYS.—Another receipt for seven dollars and eighty-five cents,—Times Printing Company, dated June 14, 1901, for seven eighty-five. It says,

(Testimony of W. F. Hays.)

“Estate of John Sullivan.” I know it was in this particular matter, publishing notice.

Mr. ROBINSON.—Same objection.

COURT.—Admit it subject to the objection.

Mr. HAYS.—I have a receipt here, twenty-five dollars, as paid into this court for the default that was referred to this morning. I am inclined to think Mr. Howe paid it back, but I am not sure. I think he did, but I am not sure. It runs in my mind that way. I paid money to the clerk here. Here are a number of small ones I will not bother with. Here is a telegram from John H. Mitchell, for the purpose of showing that Mitchell was working in the case with me endeavoring to establish Miss Carrau’s rights in this estate, and dated October 16, 1905, and sent from Portland to here. It is only for the purpose of showing that I was associated with Senator Mitchell in the case, and I have a number of his letters here if it is questioned.

Mr. ROBINSON.—We object to the offer as incompetent and immaterial.

Mr. HAYS.—And the contract of employment I made with him in Washington, D. C., and later in Seattle, I think; I am not sure whether it was here or Portland. For the purpose of showing that Senator Mitchell was in the case. I haven’t the original briefs or I could show them here. His name appears on the briefs, that are referred to in this receipt, as associate counsel.

Mr. ROBINSON.—I object to that as incompetent and immaterial.

(Testimony of W. F. Hays.)

COURT.—I will receive them subject to the objection.

Mr. HAYS.—I have a letter from Senator Mitchell of date May 18, 1904.

Mr. ROBINSON.—Same objection.

Mr. HAYS.—You make the same objection to all these letters. I will only offer two or three of them, as I have a stack of them. I brought them on purpose to show the Court. Here is a copy of a letter sent by Senator Mitchell.

Mr. ROBINSON.—They may be offered subject to our objection.

Mr. HAYS.—Here is a letter, it is not very long. This was May 18, 1904. (Mr. Hays reads letters.) I will not encumber the record with more letters, but I have more of them, and if your Honor wants to see them I will show up the correspondence between Senator Mitchell and myself. I will read this letter of April 30, 1904. (Mr. Hays reads letter.) I wish to offer in evidence proof of service of brief. (Exhibit 13.)

Mr. ROBINSON.—We renew our objection.

Mr. HAYS.—(Reading Exhibit 14.) Do you have any objection to the introduction of this?

Mr. ROBINSON.—It is objected to as incompetent, irrelevant and immaterial.

(Mr. Hays reads Exhibit 3.)

Mr. HAYS.—In connection with them I introduce what was, I would say, a cost statement mailed to me by Judge Eben Smith who was then Master in Chancery. In all it was six hundred seventeen dollars.

(Testimony of W. F. Hays.)

How much of that money I paid I don't know. This was four hundred and fifty dollars given him in a note, and I don't know whether he got any more or not, but I know the bill was six hundred and seventeen dollars. I offer this bill simply corroborative that that payment to Eben Smith was justified by the facts.

Mr. ROBINSON.—We object to it as incompetent and immaterial.

COURT.—Let it go in subject to the objection.

Mr. HAYS.—I offer in evidence proof of service of briefs in the United States Circuit Court of Appeals (reading Exhibit 20). There are many payments that I have no receipts for now, and do not know where I can get them and where they are that have been made in connection with the case, that were a legitimate part of the actual necessary outlay in conducting the case, but I wish to say there has been a variance in my statement as to ten or fifteen dollars for the costs of this brief, it turns out to be twenty-seven dollars. That I did not recall in my direct testimony of making any statement about any specific amount that I have overstated in a single instance. The payment of these items that I have referred to and mentioned seemed absolutely necessary to me. I could see no way out of it and had to pay them. I made no charge for my own personal expenses in a single instance and do not intend to do it when there is a final settlement of the case. So far as the cross-question propounded to me about my agreeing to pay the costs of the litigation, it is a matter that might

(Testimony of W. F. Hays.)

be in a sense confusing. The agreement with Miss Carrau, while it is in writing, the preliminary talks we had concerning it all were to the effect that we had to raise the money out of the estate, out of the fund for which we were contesting, and that would be only out of her pocket in the ultimate result; it would be that much less money that she would receive, and in that way she, of course, was to pay. I had to assist in every turn of the case in raising money from divers sources that we might carry on the fight, and it was in that way that Miss Carrau was to pay the expense. She had no ready money and the only money she did have was the money we believed belonged to her that was given her by John Sullivan. I make this explanation so there can be no misunderstanding as to what our agreement was as to how these costs were to be paid. It was to my interest to make them as little as possible. My relation to her being to derive one-half of the result I was careful to keep them down to a minimum that I might get the most possible out of it.

Q. (Mr. ROBINSON.) The money coming from Mr. Russell was to be paid back out of the estate in the event you were successful?

A. Yes, sir.

Q. That is the way with all the money that was received?

A. Yes, sir.

Q. Now, this money was all received, was it not, from Miss Carrau's friends?

A. No, indeed. The moneys I paid of my own were received by hard work and not from any friend.

(Testimony of W. F. Hays.)

Q. The money cabled to Ireland?

A. That was from Russell, I think. I don't know it was paid out of my own funds but I think Russell paid from time to time money so it reimbursed it. The day I sent it I probably did not get the money from Russell.

Q. Had you any obligation out on account of any of the money received or that you received for these expenses?

A. Had I any? Yes, I agreed with Mr. Russell in the event that we lost the case I would pay it and I will make it good.

Q. You guaranteed to do that with Mr. Russell?

A. Every dollar he has advanced, every dollar.

Q. But the debt was a debt from Marie Carrau to Mr. Russell?

A. Yes, and I was guaranty.

Q. You haven't made the guaranty good?

A. No, I haven't.

Q. Now, Mr. Hays, the motion to dismiss the briefs in Washington City in the Supreme Court of the United States, you testified to Miss Carrau's attorneys acting for her at that time, you printed and filed a motion to dismiss and briefs on the merits?

A. Not for nearly one year after.

Q. At that time, Mr. Hays, Miss Carrau had notified you to take no action whatever with reference to her or her interests?

A. The exact date when Miss Carrau wrote the letter you prepared for her and she signed it, as I understand it, I don't remember.

(Testimony of W. F. Hays.)

Q. Do you remember what year?

A. I think it was not 1903; it may have been 1902.

Q. All these expenses happened after that date?

A. After that notification?

Q. Yes.

A. No, we had our trial here, the moneys expended before the Master, moneys sent to Ireland and moneys paid into this court in entering our appearance, moneys paid to the printers and probate department. The only actual money that was expended after that notice was this printing of briefs in Washington City, the preparation of this record in the Supreme Court of this State, which was instituted by misunderstanding, as I believe, of counsel, as I believe, as to the legal rights of Miss Carrau—

Q. We will leave out the legal side of it and leave that to the Court.

A. It is a question of whether or not as her lawyer or attorney I had a right to protect her rights in that court.

Q. The only point I wish to emphasize is, you had some misunderstanding by reason of which Miss Carrau notified you not to do anything more in the case for her or in any of the cases?

A. I had already expended too much money and had a contract—

Q. I am not saying you had any contract; is it not true Miss Carrau had notified you not to take any further action or any expense in reference to her interests?

A. Yes, she notified me before I made these ex-

(Testimony of W. F. Hays.)

penses in Washington City. She notified me before I made the expense of preparing the brief, the main brief in the case, in the Supreme Court; that is right, one hundred seventeen, that was incurred after she gave me that written notice.

Q. And before the appeal was taken from the Circuit Court to the United States Circuit Court of Appeals? A. Yes.

Q. Now, the money you received you claim was paid for the briefs, where did you get that?

A. Paid it out of my own pocket.

Q. Did you notify Miss Carrau of any expense or action that you had taken in the Supreme Court of the United States in reference to briefs?

A. No.

Q. Anything with reference to employing Mr. Mitchell or incurring any expense with reference to that matter?

A. I didn't have any communication at all with Miss Carrau. I sent her a letter which she returned to me unopened.

Q. When was that?

A. That was in 1904, I think. I have that letter.

Q. You kept no book account of any of these items you have claimed you have expended on her behalf?

A. No.

Q. And you have no vouchers except such as you presented here, as far as you know?

A. None whatever as far as I know. I might have others but I don't know where they are. I have a letter here that I wrote Miss Carrau and she re-

(Testimony of W. F. Hays.)

turned and I assumed she did not read it, under date of January 13th (an unlucky date), 1904; that is the only communication that I had with Miss Carrau and I will read the letter and let you see it. It has been brought out here there is trouble between Miss Carrau and her attorney—

Q. I am not caring anything about the trouble between you and Miss Carrau, but these expenses have been incurred after notice you received from Miss Carrau, whatever it was?

A. I already told you they were made long before that. January 13, 1904.

Mr. ROBINSON.—Let us try to get at this in the proper order. Will you take the witness-stand? Now, all these sums of money furnished Miss Carrau by her friends was to be repaid, was it not, in the event that the suit was successful in her behalf, and she got this estate?

A. I do not know. I am only speaking and can only answer as to one individual, Mr. Russell. I never had any negotiations with any other friends of Miss Carrau, so if you refer to other friends I know nothing about it.

Q. How about Doctor Ames—didn't you get some money from him?

A. I didn't, but I got his note, which was paid by Mr. Russell later.

Q. And that money went to Miss Carrau because Doctor Ames was Miss Carrau's friend?

A. Doctor Ames didn't pay any money to my knowledge.

(Testimony of W. F. Hays.)

Q. You used his credit by which you got the money and Mr. Russell paid it?

A. That is my understanding; Mr. Russell told me he did and I believe he did.

Q. You got the money on the note?

A. No, Judge Eben Smith.

Q. It passed through your hands, did it not?

A. No, I handed it over to Judge Smith, the note.

Q. That is what I am asking you; you got it by reason of Doctor Ames' credit and took the money and gave it to Judge Smith?

A. Yes, I took and gave the note to Judge Smith. It was not payable for six months.

Q. You accepted the note in lieu of cash?

A. Yes.

Q. And that note was paid by Mr. Russell?

A. That is my understanding.

Q. Doctor Ames was a friend of Miss Carrau and he indorsed the note?

A. Yes, Russell wanted some one else to go on the note.

Q. Tell us, Mr. Hays, how did it happen in the contract you made with Miss Carrau for fifty per cent of this estate, and which is stated in the contract to be of great value, you did not include a clause with reference to who should advance the moneys and pay these expenses and costs, do you recall why you did not put it in?

A. Why, I didn't, for the reason we knew that we had to borrow the money from time to time and could

(Testimony of W. F. Hays.)

not tell where and how we would get it. We knew we had to get it out of the property.

Q. You knew she didn't have it?

A. She had a prospective or contingent recovery, so that we—

Q. You knew she didn't have any money?

A. Yes.

Q. And didn't you represent to her that you had plenty of money to invest in it?

A. No, indeed, I did not.

Q. Didn't she try to get you to agree to ten per cent of the estate, and didn't you tell her at that time you had to advance the costs and that it would cost thousands of dollars and you would have to have fifty?

A. I may have explained to her we would have to get down to some total of the net results when the costs and expenses were all paid the estate would be reduced in amount, and that my half would not be very great and her recovery would not be so very very great.

Q. Was that not the theory upon which she agreed to give you fifty per cent of that estate net, that you should advance the costs?

A. Undoubtedly not. She knew better because the next day we went to Mr. Russell and borrowed two hundred and fifty dollars, do you think she would have gone to Russell and bound herself to pay him two hundred and fifty dollars?

Q. Didn't she go because you refused to get the money in accordance with your agreement?

(Testimony of W. F. Hays.)

A. You might figure it out that way; you might dream it that way, but she didn't do it. She went there to get the money and he was the source from which she could obtain it.

Q. That was an entirely personal loan Mr. Russell made to Miss Carrau?

A. Yes, they were all advances made by him for this case; not that she was to use the money in her own private affairs at all. He didn't expect her to spend a penny of that money for any other purpose.

Q. Are you able to determine exactly how much money you paid out of your own pocket as costs?

A. The net expenses in connection with this estate?

Q. Those that went into the costs in the Federal Court?

A. Very close to four thousand dollars.

Q. And you haven't an item or book account or voucher?

A. I haven't. The only book I keep is kept by the bank. I got so much money out of the bank and I spent it and when I got any more I put it there.

Q. Miss Carrau was to pay the expenses, and how does it happen you paid them and never kept any account or—

A. Why, Miss Carrau had no money and this estate was not settled; her property was not vested in her that she could realize any money upon it or borrow any money upon it or do anything.

Q. If you never kept any book account how do you expect to determine how much it did cost?

(Testimony of W. F. Hays.)

A. I believed she would take my word implicitly; I would not by any means charge against Miss Carrau one-half of what it has cost me.

Q. As a matter of fact you could not at this time tell how much you have expended?

A. At the end of the litigation I could not recover one penny from Miss Carrau unless I had a voucher for it and you know it, unless I had a voucher. Now, it was my loss, not hers.

Q. (Mr. GODFREY.) With reference to this four hundred fifty dollars you got from Mr. Russell immediately after making this contract, do you recall what happened to that money, or what was done with that money?

A. I don't really remember. I am inclined to think that was the money I sent to Ireland; I kind of think that was it; I am not sure.

Q. Could you be definite enough to tell the Court whether that was a personal loan made to Miss Carrau or loan made on behalf of this litigation?

A. On behalf of the litigation.

Q. Sure of that?

A. No doubt of it.

Q. Do you remember on that day after Mr. Russell had issued that check and Miss Carrau got the money she went back to your office and you got two hundred dollars from Miss Carrau as a personal loan?

A. Two hundred dollars? No such thing ever happened.

(Testimony of W. F. Hays.)

Q. You are as equally positive you did not borrow this two hundred dollars from Miss Carrau as you are this four hundred twenty-five or whatever it was, was given to further this litigation?

A. I never borrowed any money from her in the world.

Q. You have never borrowed any money from Miss Carrau? You are sure of that?

A. Never borrowed a penny from Miss Carrau.

Q. You are sure of that?

A. Yes. I may have given Miss Carrau receipts for money when she paid it over to me, I don't remember, but I know that in getting any money from Miss Carrau it was moneys I realized or obtained through her from Mr. Russell for the payment of current necessary expenses, either to attorneys in Ireland or court costs.

Mr. HAYS.—I will read this letter I have written Miss Carrau: "January 13, 1904, Miss Marie Carrau:

Mr. ROBINSON.—A letter from you to Miss Carrau? We object. Is it the original?

Mr. HAYS.—Yes.

Q. Went through the mail?

A. Yes, and returned to me; just simply marked returned. (Mr. Hays reads letter.)

Mr. GODFREY.—You will produce these receipts from the Western Union Telegraph Company where you transmitted other moneys to Ireland?

A. Yes, I am safe in saying I can get them; I am

(Testimony of Miss Marie Carrau.)

not sure. I will produce the receipts or evidence I paid the money.

(Witness excused.)

(Close of lien claimant's case.)

Mr. ROBINSON.—In opposition to the lien we call Miss Carrau to the stand.

[Testimony of Miss Marie Carrau.]

Miss MARIE CARRAU, being first duly sworn, on oath testified as follows:

Q. (Mr. ROBINSON.)—What is your name?

A. Marie Carrau.

Q. Defendant in this case with Mr. Terrence O'Brien, you are the Marie Carrau? A. Yes.

Q. Miss Carrau, do you know Mr. Hays?

A. Yes, I do.

Q. You may state what, if any, the agreement was between yourself and Mr. Hays as to the costs necessary to carry on that litigation.

Mr. REAVIS.—So far as the contract is concerned, that was all in writing and the question just calls for the contract and agreement with reference to fees, and we have it all in writing.

COURT.—I will hear the testimony so far as it is competent and relevant.

A. When I went to Mr. Hays, after we discussed the case, he told me he would ask fifty per cent. I told him it was too much, I thought it was too much and I told him I was not willing to give him fifty per cent. "Well," he said, "Miss Carrau, now, you know you have no money and this litigation will cost

(Testimony of Miss Marie Carrau.)

a great deal and I will have to spend my own money and I will have to go to Ireland, maybe two or three times, and it will be a long fight, and I have money and you won't have to worry about money matters."

Q. You wanted him to take it for fifteen per cent? A. Ten per cent.

Q. But he insisted that he would have to pay the expenses and therefore he wanted fifty?

A. Yes.

Q. Now, Miss Carrau, your attention has been called to the contract which you signed here with Mr. Hays. What, if anything, have you to say to the Court with reference to that in so far as it fails to include a clause requiring Mr. Hays to advance the costs?

Mr. REAVIS.—I will object to the form of the question.

COURT.—Overrule the objection.

Mr. REAVIS.—Exception.

A. Mr. Hays drew the contract and he then read it to me.

Q. Read you the contract?

A. Yes, and I agreed to it and signed it, but afterwards when he denied to me to my face that he ever said he would pay the costs; that he was to put up the money, then I looked at the contract and read it over.

Q. You looked up the contract?

A. And found it was all different from the paper he had read to me.

Q. What was the contract, as you recall it, read to you, with reference to the costs?

(Testimony of Miss Marie Carrau.)

A. Yes, it was read to me.

Q. What was that?

A. In reference to the costs it said very strongly that Mr. Hays was to put up the money and that as compensation for his services and for the money advanced he should receive fifty per cent, and it was very strongly worded.

Q. What was to happen, if anything, with reference to the money he advanced in the event you did not win the estate—what then?

A. Of course if we could get the estate he would get the money and if we should not get the estate he would lose it.

Q. What statement did Mr. Hays make, if anything, with reference to where he was to get the money, or whether he had it himself?

A. He said he had money, plenty of money, thousands of dollars of money, and I knew his wife was very wealthy—

Q. Very wealthy, his wife? A. Yes.

Q. How long after this contract was entered into did you learn that Mr. Hays had refused to put up any money?

A. Well, the first time was when he had a letter from Mr. Collins, who was the administrator of the John Sullivan estate, he took care of it, and he had a letter from him, that if he would send him three pounds he would give him very valuable information that Mr. Sullivan left no heirs. Mr. Hays called me on the telephone and read the letter to me and he told me he needed the money to send, and

(Testimony of Miss Marie Carrau.)

he asked me to go to Mr. Russell and borrow it from him. "Now," I said, "Mr. Hayes, is it a fact that you told me you were to put up the money; that I was not going to worry about the money matters?" I said, "I am not going to put up any money for you. I told you I did not want to worry about money matters and you agreed with me that you would put up the costs." "Well," he said, "I haven't got the money." "Well," I said, "I am not going to see Mr. Russell."

Q. He wanted you to see Mr. Russell?

A. Yes, sir. Mr. Russell had gone to Mr. Hays and when he first heard I had sued or that I had a case he went to consult his lawyers and his lawyers told him I had a good case. I went to see him. I used to visit him.

Q. You went to see Mr. Russell?

A. And he said, "Marie, I see you are in trouble, but I have spoken to my lawyers about you and they told me you had a good case and I have several thousand dollars idle money. I want to help you."

Q. Mr. Russell told you? A. Yes, sir.

Q. And he also told Mr. Hays?

A. I told Mr. Russell he had better see Mr. Hays; that he was my attorney and represented me, and he said I am going down. He went there and then—

Q. Now, Miss Carrau, state to the Court fully with reference to the money that you secured to carry on this litigation. Mr. Hays was unable to carry out his agreement as to costs as you understood it? A. Yes.

(Testimony of Miss Marie Carrau.)

Q. And he told you so? A. Yes.

Q. Told you he could not get the money?

A. He hadn't that money. He had not that much to send to Mr. Collins. He said it was thirty pounds, but I found out afterwards it was only three pounds. He always told me he sent thirty pounds.

Q. Tell about these costs and what your relations with them were and what Mr. Hays' relations were.

A. I told Mr. Hays I would not ask Mr. Russell for money, but then I was afraid we would not get the information we wanted.

Q. From Ireland?

A. Yes, so I almost made up my mind I would go to Mr. Russell and ask him if he would be kind enough to let me have one hundred fifty dollars, or thirty pounds, whatever it was, and Mr. Hays, he knew what thirty pounds were in American money. He told me to apply to Mr. Russell. I did not want to go, but I made up my mind to go, so I went to ask Mr. Russell and Mr. Russell was kind enough to give me that money.

Q. What did you do with it?

A. I gave it to Mr. Hays and then I afterwards I learned it was only three pounds that Mr. Collins required, but Mr. Hays mailed a copy of that letter to me and he added the "naught."

Q. Made it thirty? A. Yes, sir.

Q. What other moneys did you get—do you know what he did with that money?

A. I suppose he sent it. He said he sent thirty pounds, but I know he sent but three pounds.

(Testimony of Miss Marie Carrau.)

Q. He did send him the three pounds?

A. Yes, sir.

Q. What other moneys?

A. Mr. Hays got a telegram after they were going to take that testimony in Ireland. He said he was going to Ireland and didn't go. I had nobody to represent me in Ireland.

Q. I don't care about those things—

A. He told me Mr. Collins, he got a telegram from Ireland that he had found a very valuable witness that would show these people were not heirs and they asked for thirty pounds. Well, Mr. Hays was going east. He was always going east—

Q. Get down to the money.

A. Yes, I went to Mr. Russell and he said, "Marie, now, Mr. Hays wants to get money from me from time to time and that I don't like." So he gave me the money and I telegraphed to Mr. Hays I had the money and he was very glad and that money was given to him.

Q. You cashed that money from Mr. Russell and turned it over to Mr. Hays to send to Ireland?

A. Yes, sir.

Q. Do you remember the date?

A. It must have been sometime between September and October, 1902.

Q. Take up the next item of money you secured?

A. I secured money from Mr. Russell for that note owing to Mr. Eben Smith.

Q. Judge Smith?

(Testimony of Miss Marie Carrau.)

A. Yes. That note was six hundred dollars, but Mr. Hays could not pay it and it was discounted. He went to the bank and—

Q. Mr. Smith? A. Yes.

Q. And put the note in the bank?

A. He had that money discounted and it was reduced from six hundred to four twenty-five, and then he went to Mr. Russell and Mr. Hays and told Mr. Russell—when the note was due—no, before this Mr. Hays went to Mr. Russell and asked him if he would not give him that money to pay. Mr. Russell said, “No.”

Q. To give Hays the money to pay Mr. Smith?

A. Yes, sir. Only on my account he would not give any more money to Mr. Hays; then he said, “If you can get somebody to go on the note with you, Mr. Hays, I am willing to give you the money.”

Q. Mr. Russell talking? A. Yes, sir.

Q. What was done?

A. So I didn't know anything about it and Mr. Hays went to my friends—it seems he had no source but my friends—

Q. To whom? A. Doctor Ames.

Q. He got the money? A. Yes.

Q. And Doctor Ames' note in the bank?

A. Mr. Russell paid that note he told me. He talked and talked and talked to go and settle the note and so I went to Mr. Russell and very kindly he paid that note. I went with him to the bank and at my request he paid the note.

Q. Now, Miss Carrau, who paid for these briefs

(Testimony of Miss Marie Carrau.)

and expenses of the court from time to time as they were incurred and as they were paid?

A. I did.

Q. You paid for all of them?

A. For all of them.

Q. How about the briefs in the Supreme Court of the United States? A. I paid for them too.

Q. You paid for those that were prepared by your lawyers? A. Yes, Judge; yes, sir.

Q. Do you remember when it was you had some disagreement with Mr. Hays and broke off your relations with him?

A. It was when I was in the court. I made up my mind if the case went against me I knew it was not properly handled.

Q. Never mind about that; I want the date.

A. It was when the case was decided and when I found that Mr. Hays was going east.

Q. Mr. Hays was not here when the case was decided in the Circuit Court?

A. No, we were waiting for a decision and he went away.

Q. That was what year now? Have you anything there to refresh your memory, by way of writing? A. It must have been 1902.

Q. Refer to the record. Have you a letter from Mr. Hays that will show?

A. September 16th.

Q. What is the paper you hold in your hand?

A. A letter.

Q. How did you receive it?

(Testimony of Miss Marie Carrau.)

A. By the mail.

Q. Through the mail? A. Yes.

Q. Do you know the writing? A. Yes.

Q. Whose signature? A. Mr. Hays'.

Mr. ROBINSON.—We offer it in evidence. This letter is offered in evidence for the purpose of refreshing the memory of the witness and fixing the date when these relations were broken off between this witness and Mr. Hays. (Exhibit "A.")

Q. Prior to the receipt of the letter which we have now offered in evidence these relations had been broken off between you and Mr. Hays?

A. Yes, sir.

Q. Did Mr. Hays ever have any authority in the matter of incurring costs for you?

Mr. REAVIS.—We object to that as a conclusion.

COURT.—I sustain the objection. The Court will have to decide that in view of the contracts.

Q. Who, if you know, paid for the appeal to the Circuit Court of Appeals? A. I did.

Q. Who paid for the briefs? A. I did.

Q. Do you remember the cost of the transcript on that appeal; have you anything there to refresh your memory?

A. The cost of the transcript to San Francisco it was fifteen hundred dollars and something.

Q. Who paid it? A. I did.

Q. What were the facts with reference to securing that money? Did Mr. Hays secure any portion of it? A. Not one cent; I did.

(Testimony of Miss Marie Carrau.)

Q. Who paid for the printing and briefs and everything of that character? A. I did.

Q. Who paid for the preparation of the transcript from this court to that court? A. I did.

Q. And the printing of the record and briefs?

A. Yes, sir.

Q. If Mr. Hays paid anything in connection with that you didn't know it? A. No.

Q. Then, do I understand you correctly, that all the money that was sent to Ireland, that you ever knew anything about, you secured from your friends? A. Yes, sir.

Q. And all the money that was paid for the court expenses of every character, all secured from your friends? A. Yes, sir.

Q. And turned it over to Mr. Hayes?

A. No.

Q. You paid it directly, most of it?

A. Yes, sir.

Q. What money did you secure and turn over to Mr. Hays? A. I secured—

Q. What about this four hundred and fifty you secured?

A. I called on Mr. Hays and took Mr. Russell to Mr. Hays, in his office, and we telephoned him I needed some money, I wanted some money.

Q. Who telephoned?

A. Mr. Hays. I told Mr. Hays to telephone Mr. Russell that I wanted some money and I knew that Mr. Russell would be glad to let me have it, so we telephoned to him and asked him for two hundred

(Testimony of Miss Marie Carrau.)

and fifty dollars, and Mr. Russell said he would come at once and he did, and I was in the office and Mr. Hays left us, and Mr. Russell said, "I am going to give this two hundred and fifty to you alone."

Q. He said what?

A. "I am going to give the two hundred and fifty dollars for yourself alone. I am going to make that out to you and I don't want you to give a cent to Mr. Hays; I want you to have it for your own use."

Q. He gave it to you?

A. Yes, made the check out to me and then Mr. Hays said I needed somebody to identify me, and we went to the bank together and went back to his office, and then Mr. Hays asked me if I needed all that money at once and I said, "Yes, I do; I need that money very badly." "Well," he said, "can't you spare some of it; I am short of money."

Q. That money was given you by Mr. Russell for you personally and not for costs?

A. No; not for costs at all.

Q. What happened when you got back to Mr. Hays' office with that money?

A. Then he asked me if I wanted all that money at once and I *told yes*, that I wanted it very much; that I needed it. "Well," he said, "can't you spare two hundred dollars for a few days?" I said, "No, I can't do it." "Well," he said, "I am short, a little short. I owe some bills and I would like to have it." "Well," I said, "if you will sure give it back to me in two or three days I will let you have it, but you must be sure at any time I call for it you

(Testimony of Miss Marie Carrau.)

will give it back to me." He said, "Oh, yes, any time, you can get it."

Q. Did you give it to him? A. Yes, sir.

Q. How much?

A. One hundred and fifty dollars.

Q. He got one hundred fifty dollars out of the \$250?

A. He wanted two hundred, but I didn't give it to him.

Q. Did he ever pay it back?

A. No. I asked him for the money, but he always asked me for some more. Then another time I gave him twenty-five. I needed it for myself and I came down and asked him to give me back this twenty-five. "Well," he said, "I haven't got it, Miss Carrau."

Q. You heard his testimony this morning with reference to advances of money for clothing and things of that character?

A. That is not true.

Q. You may state whether or not you are indebted to Mr. Hays or ever was indebted to Mr. Hays for any money advanced to you for any purpose whatever? A. Never.

Mr. ROBINSON.—We will offer at this time vouchers and statements from the various clerks and court officers, and other vouchers from other persons and submit them to counsel and ask them to be offered as one exhibit on behalf of the assignee of the judgment, I suppose that is the proper way to designate

(Testimony of Miss Marie Carrau.)

this thing, a hearing of this character. Assignee's Exhibit "B," consisting of four, five, six papers.

(Admitted in evidence as Assignee's Exhibit "B.")

Q. Who was Mr. Russell and what were his relations with you? A. We were great friends.

Q. A friend of your family? A. Yes, sir.

Q. Members of the same church?

A. Yes, knew each other for about fifteen years.

Mr. ROBINSON.—There may be some question, your Honor, with reference to the assignment of this judgment, and I will submit this paper to the witness and ask her if she can identify it and how she received it and from whom, and if she knows the signature, and ask her if it refers to the assignment of that judgment here in dispute, which there is a lien claim with reference to. Ever see that paper?

A. Yes.

Q. How did you receive it?

A. Through the mail.

Q. From whom, from me?

A. Yes, from you.

Q. Does that letter refer to the assignment of this judgment? A. Yes, sir.

Q. And the assignment of some other judgment; what other judgment was that?

A. In the state courts, for the surety company.

Q. It was the case of yourself against the Fidelity & Guaranty Company on the bond that they had given in this court for costs? A. Yes, sir.

Q. And now what happened to that judgment?

(Testimony of Miss Marie Carrau.)

You secured judgment against the bond company and that mentioned the fact that it had been assigned to me; what was done with it?

A. I don't quite understand.

Q. What did I do with the judgment against the United States Fidelity & Guaranty Company—did I collect it?

A. Yes, sir.

Q. What did you do with it?

A. I gave some to Mr. Russell.

Q. What did I do with it? I turned it over to you?

A. Yes, sir.

Q. And you turned it over to Mr. Russell?

A. Yes, sir.

Mr. ROBINSON.—We offer this in evidence as Assignee's Exhibit "C."

(Admitted in evidence as Assignee's Exhibit "C.")

Mr. HAYS.—Have you the envelope that contained this?

Mr. GODFREY.—I don't think so.

Mr. REAVIS.—You don't seem to have any envelopes for these letters here.

Mr. HAYS.—I wish to ask a question or two. When did you receive this letter?

A. I cannot tell.

Q. Within the last month?

A. It has been more than six months; I think so.

Q. You can look at the letter and refresh your memory. I want to know when you received the letter?

A. How can I tell when I have received so many letters.

(Testimony of Miss Marie Carrau.)

Q. This particular letter I thought possibly your memory might be clear about?

A. I know it was this year.

Mr. HAYS.—I don't see the materiality of the letter. I am perfectly willing to let it go in, but I don't see that it is material in any shape or form.

COURT.—I don't see whether the assignment was made before or after the claim for the lien was filed is material. The relationship of the attorneys in the case is such I don't think either one could claim anything under the principle of innocent purchaser for value received.

Mr. ROBINSON.—That is not our position at all. I merely wish to show in writing the conditions under which I held the judgment, that was all, and this letter stated it. That was the purpose of it.

COURT.—The day when it was written or received is immaterial.

Mr. HAYS.—I withdraw any objection, then.

COURT.—Let it go in.

Q. (Mr. ROBINSON.) You received this letter somewhere near the time it was written, or dated?

A. The same day or next day. I think I could find the envelope.

Mr. ROBINSON.—Never mind. I submit to the witness this document and ask if she ever saw it before and how she received it if she did receive it?

A. Yes, I received it.

Q. Is that the commission mentioned by Mr. Hays with reference to which money was cabled to Ireland?

A. Yes.

(Testimony of Miss Marie Carrau.)

Mr. ROBINSON.—That is all right; we will withdraw that.

Mr. HAYS.—You don't offer that?

Mr. ROBINSON.—No.

Mr. ROBINSON.—I submit a paper writing to the witness and ask her if she ever saw it before and how she received it, if she did receive it.

Mr. HAYS.—No objection, only it is immaterial.

Mr. ROBINSON.—We offer it in evidence, being a letter from the clerk of the Supreme Court of the United States under date of July 3, 1905.

COURT.—Let it go in subject to the objection, the same as the other papers.

Q. You did not receive any money from Mr. Hays for the costs of the litigation in the Federal Court?

A. Not at all.

Q. You secured all the money from your friends and pledged yourself to pay it back out of the estate?

A. Yes.

Q. With certain bonuses?

A. I didn't give any bonus except one party.

Q. The four hundred fifty dollars which you got of Mr. Russell went in payment in part of the money that was paid to Eben Smith, which Mr. Hays claims as a lien?

A. Yes.

Q. And the balance of that you paid how?

A. I don't understand what you mean?

Q. I will make it plain. You owed Mr. Smith, the Commissioner, six hundred dollars for taking the testimony?

A. Yes, sir.

Q. And Mr. Russell paid all that, didn't he? He

(Testimony of Miss Marie Carrau.)

paid the note of Ames and he paid the difference between the note of Ames and what was going to Mr. Smith?

A. Four hundred twenty-five, or whatever it is, four hundred and something.

Q. How was the other paid?

A. It was not paid at all, Mr. Eben Smith lost.

Q. The difference between six hundred and something and the four hundred twenty-five which Mr. Russell paid?

A. As I understand it; I may be mistaken about it, but I understood it he discounted it. I went to Mr. Smith and he told me he had discounted. Before I think Mr. Hays had got Mr. Eben Smith to make it cheaper and then I went to inquire about it and Mr. Smith said he needed the money and he went to the bank and they discounted it for him.

Q. Then Mr. Russell's money paid that debt, whatever it was? A. Yes.

Q. Do you know how much the note of Ames was, what the face of it was?

A. Four hundred and something.

Q. Wasn't the note put up for all the amount that was owing to Mr. Smith? A. Yes.

Q. Whatever it was the note covered it?

A. Yes.

Q. And then Mr. Smith discounted the note and Mr. Russell only had to pay what the bank had actually paid on the note? A. Yes.

(Testimony of Miss Marie Carrau.)

Cross-examination.

Q. (Mr. HAYS.) Miss Carrau, you will excuse me when I remark that you don't fully understand the English language at all times and can hardly make yourself understood by others; in other words, your conversation nearly always is French at home with your brother and your sisters and it is sometimes hard for you to understand even under the most favorable circumstances the English language. Now, at the time you understood that I was to pay Collins thirty pounds for an affidavit, just a little affidavit he was to make; now, if I had told you it was, not thirty shillings, but thirty something that makes five dollars, or three pounds, now, what would that English money be that makes fifteen dollars, it is thirty something, what can that be?

A. But I have a copy of that letter; it was thirty pounds.

Q. Is it not possible that whoever copied the letter might have copied it wrong—how is that copied, is it in typewriting? A. Typewritten.

Q. If that was written in type I would know nothing about it, would I? If I gave a letter to a party to copy for me and they copied it in type and they say pounds instead of shillings, instead of something else, would I be to blame?

A. You told me it was thirty pounds that were to be sent to Mr. Collins and you sent me to Mr. Russell to get the thirty pounds.

Q. If you find Mr. Collins has receipted to me for

(Testimony of Miss Marie Carrau.)

thirty pounds would that not be possibly that that was the time?

A. You sent one for thirty pounds to Mr. Collins. You sent money to Mr. Collins twice.

Q. Whatever this measure was, I can't name it, but it was thirty something, I may have thought it was pounds.

A. I don't mean that you said it on purpose, but those are the facts.

Q. I want you to be clear about that. I wanted to give you that thirty something, whatever it is, and if the stenographer has copied that thirty pounds it is evidently a mistake. Now, Miss Carrau, with reference to the payment of all of the expenses to the Circuit Court of Appeals, the briefs there, if you were shown that the only brief filed in the case was prepared by myself and printed by printers here and the receipt which I introduced here to-day for one hundred seventeen dollars at that time you and I we were not communicating back and forth and you did not give me any money then, did you? A. No.

Q. So I must have paid it, must I not, myself?

A. I don't know anything about that.

Q. You never, in fact, knew there was a brief filed in that case, except the one Mr. Robinson filed?

A. That is all.

Q. If it should turn out that after the argument at San Francisco, after Mr. Robinson had read my brief to the Circuit Court down there and got leave to file a further and additional one and you paid for

(Testimony of Miss Marie Carrau.)

that, that will explain your idea about paying for briefs, in fact you paid for that brief?

A. I know I had to pay two dollars seventy-five cents for the mistakes you made in the brief, because the brief was in such bad shape; I don't know who made it.

Q. Two dollars and seventy-five cents to make the correction of some error.

A. I don't know; I may be mistaken about it now.

Q. Was that after the argument had been made in San Francisco?

A. I could not tell you that.

Q. Miss Carrau, you recall the circumstance of your sisters—understand, I believe what you say is absolutely true in every particular and I don't question your truth for a moment, as you understood it and saw it, but the idea I want to get before your mind are the material facts; do you recall the circumstance of one day very shortly after you came to me and after we made our arrangement, about it being necessary, that you were grieving and it was proper you should have mourning and dark veils, and that it was proper; do you remember about that conversation?

A. I always had a black dress in my wardrobe; always I had a black dress.

Q. Do you recall this conversation that was had between you and your sister and your brother in which I thought it would be proper, and you would naturally be an object of scrutiny—people would be looking at you and wondering about you, why, if you were grieving, as you were manifestly, about the

(Testimony of Miss Marie Carrau.)

death of Mr. Sullivan, why you would not robe yourself in mourning, and at the time you didn't have the money to do so, you said, and I asked you how much it would cost and you said you thought about ten dollars, and that at that time I offered you the ten dollars and you said that you wanted it for your sisters also; that would make thirty dollars and you recall I offered to give you the thirty dollars?

A. I was dressed in black at the time Mr. Sullivan died and besides, I never bought dresses for my sisters. I wore black before that.

Q. I realize it has been a long time since then.

A. My sister was never in your office but once, and that time she testified as to what she knew, and she has never been in your office since.

Q. Your married sister?

A. She never was there but once; she didn't like to go there.

Q. At the time you spoke of that you let me have this one hundred and fifty dollars as you remember. My memory is it was one hundred and twenty-five, it may be one hundred and fifty, but that was very shortly after we started in wasn't it?

A. Quite a while.

Q. Wasn't that the first advance Mr. Russell made?

A. Yes. It was quite a while; at least three months.

Q. Did I sign the note; do you remember?

A. No, he gave me a check.

(Testimony of Miss Marie Carrau.)

Q. Didn't you execute to him a note for the two hundred and fifty?

A. Much later and then we had to sign when you wanted more money.

Q. Not at that time? A. No.

Q. You are sure?

A. As far as my recollection is.

Q. If Mr. Russell should produce the note of two hundred and fifty signed by me, then of course your recollection would be wrong?

A. Yes, but it was not on that day we signed it; we might have signed it later.

Q. I would like to know about this letter which contains the figure thirty. I might have said thirty pounds, but unquestionably it was thirty something, but not thirty pounds?

A. But you said to me thirty pounds and I then said the same thing to Mr. Frater.

Q. Possibly I did. I know I sent Mr. Collins thirty pounds at one time, Mr. Donogan thirty pounds, and Mr. Collins altogether two hundred and fifty dollars. Well, Miss Carrau, when you wrote this letter telling me of your grievance you had against me, I was in the east; who wrote that letter for you? A. I did.

Q. Did you write it?

A. I wrote the letter; yes.

Q. Was it not a typewritten letter?

A. I wrote to you a long letter before that.

Q. Wasn't the letter in which I was to be discharged from your employ in typewriting?

(Testimony of Miss Marie Carrau.)

A. I wrote you a long letter telling you about my troubles.

Q. Were they not enclosed in the same envelope?

A. Maybe it was; I would not say it was.

Q. If there was a typewritten letter—dismissal, who wrote that, who dictated that?

A. I did write it, and as far as my recollection is, Mr. Combs took it to some stenographer to have it typewritten.

Q. If that writing would show it was written by a machine that was identical with letters that had been written upon another typewriting machine, and the date was written in ink and not written by the typewriter, would it not be possible that might have been written by Mr. Robinson?

A. That was not written by Mr. Robinson, I know it.

Mr. HAYS.—I am glad of that.

Redirect Examination.

Q. (Mr. ROBINSON.) It is a fact that Judge Houser and myself absolutely refused to have anything to do with your troubles with Mr. Hays?

A. Indeed, that is right.

Q. You got this money to pay for the appeal to the Circuit Court of Appeals largely from your friends, in connection with Judge Dore?

A. Yes.

Q. And Judge Dore paid your printing bills for these briefs?

A. He had them printed and I gave him the money.

(Testimony of Miss Marie Carrau.)

Q. (Mr. GODFREY.) Did Mr. Russell, during the first stages of this case, did Mr. Russell ever complain of the management of Mr. Hays?

A. Yes; he wanted me to have other lawyers; because he didn't say very kind things of Mr. Hays.

Q. Can you recall what Mr. Russell said at that time?

COURT.—I don't think that has any bearing.

Mr. GODFREY.—I withdraw the question.

**[Proceedings Concerning Assignment of Judgment,
Submission of Case, etc.]**

Mr. ROBINSON.—There is no question here about the assignment of the judgment or anything of that character?

Mr. HAYS.—None whatever.

Mr. ROBINSON.—We submit the case, as far as we are concerned.

Mr. HAYS.—I simply want to contradict a statement as a witness. The statement that I have gotten this money from Mr. Russell with the understanding that it should be used as a personal loan; I think that Miss Carrau made a mistake in that, and I would like to have for that purpose the testimony of Mr. Russell. I would like on that point to further examine Mr. Russell, because I think Miss Carrau has forgotten about that. It is a long time ago and it is not unreasonable or unnatural that she should. It is not very material but it goes to this point: That Mr. Russell at all times from the time he commenced the payments and conferred with me as to the prob-

ability of her winning and would furnish money if I stood back of her and agreed it would be paid, and I told him I would do it independent of whether we succeeded or failed. I would like to have Mr. Russell recalled for the purpose of contradicting the positive statement made by Miss Carrau upon the question of the manner in which these payments were made; all of them, and especially the two hundred and fifty testified to.

COURT.—I think Mr. Russell's statement contained all that is material.

Mr. HAYS.—I agree with the Court, only I felt I would like to have counsel and the Court know exactly the facts about the whole transaction and Miss Carrau's memory is not clear on that, and I excuse that because of her lack of knowledge of the language. I do not think there is a bit of question about her truth. She would not vary the truth for the world, and I know it.

COURT.—I will go through these vouchers and give my decision in writing.

And in addition to the foregoing proceedings at the trial reference is hereby made to the various exhibits introduced in evidence as mentioned therein and said exhibits are made a part of this proceeding and a part of said evidence, and with such exhibits made a part thereof, the assignee of said judgment and as the stakeholder and trustee of said funds presents the foregoing as a bill of exceptions, being the proceedings at the trial of the question as to the validity, etc., of said lien claim in this case, and prays that the same may be settled, allowed, signed and

certified by the Judge of this court, as provided by law and the rules of the above-entitled court.

Dated at Seattle, Washington, March 28, 1910.

JAMES J. GODFREY and
J. W. ROBINSON,

Solicitors for the Assignee and Stakeholder of the
Funds derived from the Collection of said Judgment for Costs Herein et al.

[Certificate to Bill of Exceptions and Proceedings.]

United States of America.

District of Washington.

Western Division.—ss.

The foregoing Bill of Exceptions was presented to the undersigned, Judge of the above-entitled court, who was present and presiding throughout the trial of all the proceedings referred to in the foregoing Bill of Exceptions, being the proceedings at the hearing as to the validity, etc., of the lien claim of W. F. Hays herein against the judgment for costs entered herein, and all the proceedings referred to in the foregoing Bill of Exceptions, and this Bill of Exceptions being, within the time fixed by the rules and order of this Court, duly filed and no exceptions having been filed thereto within the time allowed, and said Bill of Exceptions and proceedings are hereby certified to be true and to be the Bill of Exceptions and proceedings at the trial, and the whole thereof, in the above-entitled proceeding for the summary determination of said lien claim.

Dated March 31st, 1910.

C. H. HANFORD,
Judge.

We hereby admit service of the foregoing Bill of Exceptions and proceedings at the trial of the questions relating to the lien claim of W. F. Hays.

Dated March 31st, 1910.

W. F. HAYS,
CHARLES T. HUTSON,
For W. M. Russell.

[Endorsed]: Bill of Exceptions as Settled and Allowed. Filed U. S. Circuit Court, Western District of Washington. Mar. 31, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN and EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

Proof of Service [of Petition for Appeal, etc.].

United States of America,
Western District of Washington,
Northern Division.

P. L. Burns being duly sworn, on oath says: That he is a citizen of the United States over the age of twenty-one years, not a party to the above-entitled

action and competent to be a witness therein; that he did on the 3rd day of March, 1910, personally serve the attached petition for appeal, order allowing appeal and fixing cost and supersedeas bond and notice of hearing thereof upon W. F. Hays by delivering to and leaving with the said W. F. Hays, personally, in the city of Seattle, county of King, State of Washington, a true copy of each thereof; and upon W. M. Russell by delivering to and leaving with C. T. Hutson, attorney herein, for W. M. Russell, personally, at his office in the city of Seattle, county of King, State of Washington, a true copy of said petition, orders and notice and each thereof on the 4th day of March, 1910.

P. L. BURNS.

Subscribed and sworn to before me this 5th day of March, 1910.

J. W. ROBINSON,

Notary Public in and for the State of Washington,
Residing at Seattle.

[**Petition for, and Order Allowing Appeal, etc.**]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 943.

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

PETITION FOR APPEAL FROM THE OR-
DERS AND JUDGMENT OF THE COURT
ESTABLISHING THE LIEN CLAIM OF
W. F. HAYS AGAINST THE JUDGMENT
HEREIN; AND ORDER ALLOWING AP-
PEAL AND FIXING COST AND SUPER-
SEDEAS BOND.

Now comes J. W. Robinson, the assignee of the judgment herein and stakeholder and trustee of the funds secured by the satisfaction on execution issued herein for the collection of said judgment, and feeling himself aggrieved by the final orders made and entered herein with reference to said lien claim of W. F. Hays on January 24th and 25th, 1910, and on February 28, 1910, whereby the funds were ordered distributed to Russell, et al., with accrued interest, etc., and the said Robinson, as the assignee of said

judgment and the stakeholder and trustee of said funds, for himself and all those interested in said fund and its distribution, does hereby appeal from said final order and from the various orders entered in said cause with reference to the establishment of said lien and the disbursement of said funds, materially affecting the rights of this assignee as stakeholder and trustee of said fund, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors, which is filed herewith, and he prays that this, his petition for said appeal, may be allowed and that a transcript of the record proceedings and papers relating to said lien claim upon which said final order and judgment were made, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, and your petitioner further prays that an order be made herein fixing the amount of security to be given or furnished for said appeal, as a cost and supersedeas bond, and that the same be superseded.

JAMES J. GODFREY and
J. W. ROBINSON,
Solicitors for said Assignee et al.

The foregoing petition for appeal is granted and the appeal allowed.

It is further ordered that the costs and supersedeas bond herein on such appeal is fixed at the sum of one thousand dollars, which bond when conditioned as provided by the rules of the Circuit Court of Appeals shall be a cost and supersedeas bond on appeal in this action, and upon its being approved by the

Judge of this court, the said W. M. Russell is directed and required to repay into the registry of this court the sum of one thousand seven hundred ninety dollars, and the said W. F. Hays the sum of four hundred ninety-six and 33/100 dollars, withdrawn from the registry of this court under the order of the Court as to distribution from which this appeal is taken.

Done in open court this March 28th, 1910.

C. H. HANFORD,
Judge.

Hays takes exception—allowed.

C. H. HANFORD,
Judge.

Filed U. S. Circuit Court, Western District of Washington. Mar 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

Assignment of Error.

Come now the solicitors for the assignee herein and file herewith assignment of error in the proceed-

ings to establish the lien claim of W. F. Hays, which assignment of error is attached to and made a part of the petition for appeal filed herein from the orders and judgments rendered herein with reference to said lien claim of the said Hays, establishing the same and fixing the manner in which the fund held by the said Robinson in the registry of the court is to be distributed, and all orders entered herein affecting the same and affecting the substantial rights of the said assignee of said judgment, alleging that each of the orders and judgments entered herein with reference to that subject matter in this cause are erroneous in the following particulars, to wit:

1. The Court erred in holding and in entering the order determining that the lien claim of the said Hays was a valid claim against said judgment or the funds arising from the enforcement of the execution herein, and for the reason that said pretended lien claim was not in form or substance as required by statute and was not a valid lien or claim against said judgment or said funds.

2. That the Court erred in holding there was anything due the said Hays by way of money advanced or for which he stood as the guarantor to Marie Carrau to make her defense in this action and erred in holding that the testimony submitted in support thereof was sufficient either to establish said lien or to determine the amount or any amount thereunder as constituting said lien.

3. The Court erred in determining any question whatever with reference to the amount of money W. M. Russell had advanced or that he had any lien un-

der the Hays lien claim for any part thereof, and erred in holding that the said Russell was before the Court for any purpose whatever with reference to said lien claim, and the Court erred in directing that any portion of said funds should be distributed to the said Russell or to the said Hays, and in not holding that said lien was invalid and not a compliance with the statute even in the event that the said Hays had a valid lien against said judgment or funds, and erred in entering any order whatever to distribute said funds or any portion thereof while other persons claiming to have advanced money to the said Carrau to make her defense in this cause should hold an equitable lien against said funds pro rata together with the said Russell and the said Hays, if either thereof had advanced money to Carrau to make her defense herein.

4. The Court erred in refusing to hear the petition on behalf of the said Robinson as assignee, stakeholder and trustee of said judgment and funds, and in not making an order distributing the whole of said funds equitably between all the persons who had furnished money to the said Carrau in order to make her defense in this main action which was shown in the testimony submitted in support of and in opposition of and to the Hays alleged lien claim.

JAMES J. GODFREY and
J. W. ROBINSON,

Solicitors for said Assignee, Stakeholder and Trustee of said Judgment, et al.

[Notice of Presentation of Petition for Appeal, etc.]

To W. M. Russell and to His Solicitors, Robert Lindsay and C. T. Hutson, and to W. F. Hays and to His Solicitor, J. B. Reavis:

You and each of you hereby take notice that the foregoing petition for appeal and for an order fixing the cost and supersedeas bond, together with said assignment of error, will be presented to the Judge of the above-entitled court at the Federal Court Building at Seattle, Washington, on March 7, 1910, at the opening of court at 10 o'clock A. M., of said day, or as soon thereafter as counsel can be heard, and that we will then and there petition the Court as therein indicated.

Dated at Seattle, Washington, March 3, 1910.

JAMES J. GODFREY and
J. W. ROBINSON,

Solicitors for Petitioner, etc.

We hereby accept due and timely service of the foregoing petition for allowance of appeal, order fixing bond, assignment of error and notice of hearing, this March 3, 1910.

Solicitors for W. M. Russell.

[Endorsed]: Order allowing appeal and fixing bond at \$1,000. Filed U. S. Circuit Court, Western District of Washington. Mar. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Endorsed]: Petition for Appeal, Order Allowing Same and Fixing Bond and Supersedeas, Assign-

ment of Error and Notice of Hearing. Filed U. S. Circuit Court, Western District of Washington. Mar. 7, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[**Notice of Filing of Cost and Supersedeas Bond on Appeal.**]

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

In the Matter of the Distribution of Funds Under
Lien Claim of W. F. HAYS.

To W. M. Russell and to W. F. Hays:

You are hereby notified that J. W. Robinson has filed in this court in the above-entitled proceedings a cost and Supersedeas Bond on Appeal in the sum of \$1,000, this day approved by the Judge of the court.

Dated at Seattle, March 31, 1910.

W. D. COVINGTON,

Clerk.

[Endorsed]: Notice of Filing Bond. Filed U. S. Circuit Court, Western District of Washington.

Mar. 31, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN and EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, as Administrator, etc., and
MARIE CARRAU,

Respondents.

Bond on Appeal.

Know all Men by These Presents: That we, J. W. Robinson, as the assignee of the judgment herein, appellant, as principal, and Fidelity and Deposit Company of Maryland, as sureties, acknowledge themselves to be jointly and severally held and firmly bound unto W. M. Russell and W. F. Hays, and to each of them, in the full sum of One Thousand Dollars, lawful money of the United States, for which payment well and truly to be made we jointly and severally bind our and each of our heirs and successors by these presents.

Dated at Seattle, Washington, March 29, 1910.

Now, the condition of the foregoing obligation is such, that whereas, in the above-entitled court and cause a final order was rendered and entered herein in favor of the said Russell and the said Hays di-

recting a distribution of the funds in the registry of the court paid in upon a judgment in favor of Marie Carrau and against the complainants and thereafter assigned to the said Robinson, and which order was made and entered herein January 25, 1910; and

Whereas, an appeal from such order has been taken to the United States Circuit Court of Appeals for the Ninth Circuit by the said Robinson.

Now, therefore, if the said principal and appellant shall prosecute said appeal to effect and pay all damages and costs if he fail to make good his plea, then the above obligation shall be void; otherwise to remain in full force and effect, and the said sureties consent and agree that in case of any breach in the conditions of this obligation the said Circuit Court may upon notice of not less than ten days proceed summarily in the suit in which said bond is given to ascertain the amount which we are bound to pay on account of such breach and render judgment therefor against each and award an execution therefor.

[Seal]

J. W. ROBINSON,

Principal.

FIDELITY AND DEPOSIT CO. OF
MARYLAND.

By WALTER C. MCKAY,

Attorney in Fact.

Attest: A. W. WHALLEY,

Agent.

The foregoing bond is hereby approved this March 31, 1910.

C. H. HANFORD,

Judge.

We hereby accept due and timely service of the foregoing bond this March —, 1910.

[Endorsed]: Bond on Appeal. Filed U. S. Circuit Court, Western District of Washington. Mar. 31, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Objections to Granting of Petition for Appeal, etc.]

In the Circuit Court of the United States, Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAGHAN, EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and MARIE CARRAU,

Respondents.

OBJECTIONS TO THE PETITION FOR APPEAL AND FIXING SUPERSEDEAS BOND, ETC.

Comes now W. F. Hays, in Propria persona, specially appearing for the purpose, and none other, of objecting to the granting of the petition for appeal herein of J. W. Robinson and to fix supersedeas bond, etc., for the following reasons:

1. Because the decision and orders of this Court sought to be appealed from and superseded, entered on the 6th day of July, 1908, and on the 18th day of

November, 1909, and on the 28th day of January, 1910, and each of them were upon and in pursuance to the petition of the said J. W. Robinson, and said orders and each of them are non-appealable and the said Robinson is bound thereby.

2. That the order of January 28, 1910, directing the clerk of this court to pay out of the money so ordered was self-executing and supersedeas will not lie and is unauthorized in law.

3. That the judgment or order sought to be appealed from has been in all things fully executed and discharged, and this Honorable Court is without power or jurisdiction to grant appeal therefrom or fix a supersedeas bond therein.

4. That the appeal now sought by said Robinson as "Trustee" when the record discloses no such relationship existing, is an attempt on his part to read into the record a relationship not existing and not disclosed by the record.

The foregoing objections and each of them are based upon the records and files in said cause.

W. F. HAYS,

In Propria Persona.

[Endorsed]: Objections to the Petition for Appeal and Fixing Supersedeas Bond, etc. Filed U. S. Circuit Court, Western District of Washington. Mar. 28, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

*United States Circuit Court for the District of
Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN et al., and J. W. ROBIN-
SON, Assignee,

Respondents.

Order Extending Time to Docket Case on Appeal.

Now, on March 31st, 1910, it appearing to the Court that the record of this action on appeal to the United States Circuit Court of Appeals cannot be prepared or certified within the time required by the citation, to wit, April 30, 1910, and it appearing to the Court that this appeal cannot be heard before the September term of said U. S. Circuit Court of Appeals and at Seattle, Washington, 1910, and upon application of the appellant, and the Court being advised,—

It is ordered that the time be and the same is hereby extended until June first, 1910, in which to prepare and certify said record.

Dated March 31st, 1910.

C. H. HANFORD,
Judge.

[Endorsed]: Order Extending Time to Docket Case on Appeal. Filed U. S. Circuit Court, West-

ern District of Washington. Mar. 31, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 943.

HANNAH O'CALLAHAN and EDWARD CORCORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and MARIE CARRAU,

Respondents.

In the Matter of Establishing the Lien of *F. W. HAYS* and Distribution of Funds.

Citation [on Appeal (Copy)].

United States of America, to *F. W. Hays* and *W. M. Russell*, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, State of California, within thirty (30) days from date of this Citation, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein *J. W. Robinson*, as assignee of the judgment in the foregoing entitled action entered therein against the complainants and in favor of *Marie Carrau*, and by her

assigned to Robinson, wherein W. F. Hays and W. M. Russell are appellees and J. W. Robinson, as assignee, is appellant, to show cause, if any there be, why the Judgment and Orders in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this March 31st, 1910.

[Seal]

C. H. HANFORD,
Judge.

Copy of the within Citation received this March 31, 1910, at Seattle, Washington.

CHARLES T. HUTSON,
Attorney for W. M. Russell.

W. F. HAYS,

In Propria Persona.

[Endorsed]: Citation. Filed U. S. Circuit Court, Western District of Washington. Mar. 31, 1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[Praeceptum for Transcript of Record.]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAGHAN et al.,

Complainants,

vs.

TERRENCE O'BRIEN et al.,

Defendants.

In the Matter of the Lien Claim of W. F. HAYS
and W. M. RUSSELL.

To the Clerk of the Above-entitled Court, Seattle,
Washington.

Sir: I will desire the following records on appeal
in this proceeding from the judgment of the Court
establishing the Hays-Russell lien herein, to wit:

The judgment in favor of Marie Carrau, filed Aug.
7, 1905.

Assignment of judgment to J. W. Robinson, filed
Mar. 26, 1908.

Memorandum Decision of Court, filed July 6, 1909.

Petition of J. W. Robinson for distribution of pro-
ceeds, filed Dec. 17, 1909.

Motion to strike petition of J. W. Robinson, filed Dec.
23, 1909.

Motion to reconsider Memorandum Decision, filed
Jan. 21, 1910.

Order Distributing Costs, filed Jan. 24, 1910.

Motion on Affidavit of J. W. Robinson for Order to
Show Cause, filed Jan. 28, 1910.

Order to Show Cause, filed Jan. 28, 1910.

Notice to prepare findings, etc., on decree in accord-
ance with Decision, filed July 6, 1909.

Petition of R. J. Ferguson et al., to be allowed to
intervene in re distribution of funds, filed Feb.
24, 1910.

Special appearance of Reynolds, Ballinger & Hutson
for W. M. Russell, filed Feb. 28, 1910.

Order denying petition of intervenors, filed Feb. 28,
1910.

Order denying request for findings, filed Feb. 28, 1910.

Order granting supersedeas and requiring return of funds, filed Feb. 28, 1910.

Order granting motion to strike petition of J. W. Robinson to distribute funds pro rata, filed Feb. 28, 1910.

Filed Petition for Appeal, Assignment of Errors and Proof of Service, filed March 7, 1910.

Order allowing appeal; fixing bond at \$1000 and for return of money into court (attached to petition), filed Mar. 28, 1910.

Bond on Appeal, filed March 31, 1910.

Notice by clerk to W. F. Hays and W. M. Russell of filing of Bond for \$1000, filed March 31, 1910.

Objections to petition for appeal and fixing supersedeas bond, filed on March 28, 1910.

Citation, filed March 31, 1910.

Order extending time to docket cause in Circuit Court of Appeals to June 1st, 1910, filed March 31, 1910.

Praecipe for Transcript of Record, filed April 6, 1910.

Bill of Exceptions and proceedings at trial of the establishment of the lien claim of W. F. Hays herein, as settled and filed March 31, 1910.

Yours respectfully,

J. W. ROBINSON,

J. J. GODFREY,

Solicitors for Robinson.

[Endorsed]: Praecipe. Filed U. S. Circuit Court, Western District of Washington. Apr. 6,

1910. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

[**Certificate of Clerk U. S. Circuit Court to Transcript of Record.**]

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

No. 943.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Appellants,

vs.

HANNAH O'CALLAGHAN and EDWARD CORCORAN,

Appellees.

United States of America,
Western District of Washington,—ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States, for the Western District of Washington, do hereby certify the foregoing one hundred and thirty-two (132) typewritten pages, numbered from 1 to 132, inclusive, to be a full, true and correct copy of so much of the record and proceedings in the above and foregoing entitled cause, as is called for by praecipe of solicitor for appellants, as the same remain of record and on file in the office of the clerk of the said court, and that the same constitute the record on appeal from the order, judgment and decree of the Circuit Court of the United

States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of \$86.80, and that the said sum has been paid to me by J. W. Robinson, Esquire, solicitor for appellants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at Seattle, in said District, this 9th day of May, 1910.

[Seal]

A. REEVES AYRES,
Clerk.

By W. D. Covington,
Deputy Clerk.

*In the Circuit Court of the United States, for the
Western District of Washington, Northern Division.*

No. 943.

HANNAH O'CALLAHAN and EDWARD COR-
CORAN,

Complainants,

vs.

TERRENCE O'BRIEN, Administrator, etc., and
MARIE CARRAU,

Respondents.

In the Matter of Establishing the Lien of *F. W.*
HAYS, and Distribution of Funds.

Citation [on Appeal (Original)].

United States of America, to *F. W. Hays* and *W. M. Russell*, Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, State of California, within thirty (30) days from date of this citation, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Western District of Washington, Northern Division, wherein *J. W. Robinson*, as assignee of the judgment in the foregoing entitled action entered therein against the complainants and in favor of *Marie Carrau*, and by her assigned to *Robinson*, wherein *W. F. Hays* and *W. H. Russell* are appellees and *J. W. Robinson*, as assignee, is appellant, to show cause, if any there be, why the judgment and orders in said appeal mentioned, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable *MELVILLE W. FULLER*, Chief Justice of the United States, this March 31st, 1910.

[Seal]

C. H. HANFORD,

Judge.

Copy of the within Citation received this March 31st, 1910, at Seattle, Washington.

CHARLES T. HUTSON,
Attorney for *W. M. Russell*.

W. F. HAYS,

In Propria Persona.

[Endorsed]: Original. No. 943. In the Circuit Court of the United States for the Western District of Washington, — Division. Hannah O'Callahan and Edward Corcoran, Complainants, vs. Terrence O'Brien, Adm., etc., and Marie Carrau. Filed U. S. Circuit Court, Western District of Washington. Mar. 31, 1910. Citation. A. Reeves Ayres, Clerk. W. D. Covington, Deputy.

Service of papers in this case may be made upon McCafferty, Robinson & Godfrey, Attorney— for ———, at No. 902 Lowman Bldg., Room —, Seattle Block, Washington.

[Endorsed]: No. 1861. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Robinson as Assignee of a Certain Judgment Entered in the Circuit Court of the United States for the Western District of Washington, Northern Division, in the Cause Entitled Hannah O'Callaghan and Edward Corcoran, Complainants, vs. Terrence O'Brien, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellant. vs. W. F. Hays and W. M. Russell, Appellees. In the Matter of the Establishment of a Certain Lien Claim of W. F. Hays, etc. Transcript of Record. Upon Appeal from the United States Circuit Court for the Western District of Washington, Northern Division.

Filed May 31, 1910.

F. D. MONCKTON,
Clerk.